

THE FINANCIAL INTERESTS OF MEMBERS OF PARLIAMENT

INTRODUCTORY NOTE FOR TOPICAL DISCUSSION

Presented by Mr. Clifford BOULTON, Clerk assistant
of the House of Commons of the United Kingdom

1. This paper does not concern itself with financial interests that are incompatible with membership of Parliament, such as paid State appointments, but with interests that Members are permitted to retain. It invites discussion of the steps taken by Parliaments to require their Members to provide information of any pecuniary interest (or other material benefit) which might be thought to affect their conduct as Members of Parliament, or influence their actions, speeches or votes in Parliament.
2. In the United Kingdom House of Commons, information on financial interests is provided under two main heads —
 - (i) by *ad hoc* declaration, relevant to the business in hand, and
 - (ii) by means of a general declaration in a public Register of Members' Interests.

3. *Ad hoc* declaration

In 1974, after a long period when declaration of interest in debate had been a matter of conventional practice rather than a formal rule, the House decided

"That, in any debate or proceeding of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he *shall* disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have."

The rule applies not only to debates at plenary sittings but to committee debates (whether in public or private), to witness hearings and to the presentation of petitions. It does not apply to the tabling of Motions, Amendments or Questions, nor to the asking of supplementary Questions in the House. Nor is there a requirement to declare an interest when a Member votes. In all these latter cases, a declaration in the Register of Members' Interests is held to be sufficient. (In very rare cases a Member's personal pecuniary interest may be such that he is not entitled to vote, but this must be on some particular issue where he has a direct interest not held in common with other citizens).

4. *The Register of Members' Interests*

The nine specific classifications under which Members have been required to register their interests are:—

1. Remunerated directorships of companies, public or private.

2. Remunerated employments or offices. Ministerial office and membership of the European Parliament, Council of Europe, Western European Union and the North Atlantic Assembly do not need to be registered.

3. Remunerated trades, professions or vocations.

4. The names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House.

5. Financial sponsorships, (a) as parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (b) as a Member of Parliament, by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect. This subsection includes gifts in relation to a Member's parliamentary duties, other than those received from abroad to which category 7 applies. It is, however, not necessary for a Member to register the fact that he is supported by his local constituency party.

6. Overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds. Overseas visits undertaken on behalf of the Inter-Parliamentary Union, the Commonwealth Parliamentary Association, the Council of Europe, the Western European Union and the North Atlantic Assembly, or by any institution of the European Economic Communities need not be registered.

7. Any payments or any material benefits or advantages received from or on behalf of foreign Governments, organisations or persons.

8. Land and property of substantial value or from which a substantial income is derived. A Member's home need not be declared, unless he also receives an income from it.

9. The names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issues share capital.

There is a Registrar of Members' Interests appointed by the Secretary General who assists Members in making their declarations. He also acts as the Secretary of a Committee of Members who consider the arrangements to be made for the declaration of interests and the way in which the Register is compiled.

The scope of the Register, devised by the Committee and adopted by the House, seeks to balance, on the one hand, what should be publicly known about Members of Parliament with, on the other, the proper degree of privacy to which they and their families are entitled. They are not required to disclose the amount of any remuneration or benefit they may have, nor the interests of spouses or children, except in certain circumstances relating to shareholdings.

It is left to individual members, with or without the advice of the Registrar, to give the required information. Each Member is responsible for what is recorded

about himself. A specimen page of the Register, chosen at random, is reproduced as an Annex to this note.

It is the responsibility of Members to notify changes in their registrable interest within four weeks of the change occurring. The Register is open for public inspection by prior appointment. A copy, amended weekly, is placed in the Library of the House for the use of Members. At intervals, the Register is published in book form and is available for purchase — the 1984 edition was priced at £ 6.40!

5. *Suggested points for discussion*

The rules for financial declaration, having now been in operation for almost ten years, are not currently a matter of controversy in the United Kingdom. This might suggest that they have proved to be appropriate for their particular circumstances. The following points have, however, been made in connection with them, and the experience and opinions of members of the Association would be welcome.

- (a) Is a public Register really justifiable? (There are those who say that *ad hoc* declaration is enough, and that a Member's interests that do not arise on the public issues he is concerned with should remain private).
- (b) Should the amounts of financial interests, as well as their nature, be declared? (In the United Kingdom it is held that this would constitute an unreasonable invasion of privacy).
- (c) Should there be a specific declaration of interest when voting or when tabling Motions, Bills, Amendments and Questions? (In the United Kingdom the general declaration in the Register is enough for these).
- (d) What sanctions should there be in cases of non-compliance? (In the United Kingdom no provision has been made for any penalties and no cases of non-compliance (except in (e) below) have arisen).
- (e) Does your Parliament have power to introduce a compulsory scheme of declaration by Resolution, or would a Statute be required? (In the United Kingdom one Member has consistently refused to complete the Register on the grounds that its introduction was a constitutional change requiring legislation. No action has been taken against him, although the official view is that he could be disciplined under the House's privilege powers).
- (f) Should candidates at Parliamentary elections be required to declare their interests? (There has been some comment in the United Kingdom that it is a little late to discover a politician's interest only after he has been elected!)

ANNEX

Sample extract from the House of Commons Register of Members' Interests.

(The numbers refer to the headings described in para. 4)

KNOX, David (Staffordshire, Moorlands)

2. Employment or Office

Economic adviser to Lucas Industries, Ltd., Birmingham.

Parliamentary adviser to the National Association of the Launderette Industry.

Parliamentary adviser to the Institute of Cost and Management Accountants.

LAMBIE, David (Cunninghame South)

Nil

LAMOND, James (Oldham Central and Royton)

5. Financial Sponsorships

By the Amalgamated Union of Engineering Workers (Technical, Administrative and Supervisory Section) as a Candidate and as a Member of Parliament. No payment is made to me personally.

6. Overseas Visits

As Vice-President of the World Peace Council, I attend overseas meetings about six times a year:

LAMONT, Norman (Kingston upon Thames)

Nil

LANG, Ian (Galloway and Upper Nithsdale)

3. Trades or Professions, etc.

Underwriting Member of Lloyd's.

9. Declarable Shareholdings

Hutchison & Craft (Underwriting Agents) Ltd.

P. MacCallum & Sons Ltd.

LATHAM, Michael (Rutland and Melton)

1. Directorships

Non-executive Director, Lovell Homes Ltd., Gerrards Cross.

3. Trades or Professions, etc.

Regular contributor to a journal in the building trade; occasional contributor to other magazines and newspapers.

LAWLER, Geoffrey (Bradford North)

2. Employment or Office

Consultant to Bulldog Publicity Services Ltd., Bradford.

4. Clients

Grandmet Waste Services Ltd., Aylesbury, Bucks.

LAWRENCE, Ivan (Burton)

2. Employment or Office

Chairman of the Burton-on-Trent Artisan Dwelling Co. Ltd.

3. Trades or Professions, etc.

Barrister-at-Law (Queen's Counsel).

Occasional broadcasting, journalism and lecturing.

6. Overseas Visits

November 1983 to Chile as a member of the Bow Group, at the invitation of the University of Chile.

LAWSON, Rt. Hon. Nigel (Blaby)

Nil

LEADBITTER, Edward (Hartlepool)

5. Financial Sponsorships

By the National Union of Public Employees.

LEE, John (Pendle)

6. Overseas Visits

19-29 September 1983, visit to Hong Kong, as guest of the Hong Kong Government.

9. Declarable Shareholdings

Jonn Lee (Consultants) Ltd.

Situation Investments Ltd.

Meadowend Investments Ltd.

Pochins Ltd.,

Third Mile Investment Company Ltd.

LEIGH, Edward (Gainsborough and Horncastle)

3. Trades or Professions, etc.

Barrister.

LEIGHTON, Ronald (Newham North East)

5. Financial Sponsorships

Society of Graphical and Allied Trades '82.

LENOX-BOYD, Hon. Mark (Morecambe and Lunesdale)

1. Directorships

K.A.E. Ltd.

9. Declarable Shareholdings

The Iveagh Trustees Ltd.

Ince Estates Company

Kraushar Andrews & Eassie Ltd.

British Pacific Building Ltd.

Duke Seabridge Ltd.

MINUTES, SPRING MEETING 1985
(LOME 25th TO 29th MARCH)
EXTRACTS

Topical discussion on the financial interests of Members of Parliament
Introduced by Mr. Pring (United Kingdom)

The President said that at its last meeting in Geneva, the Association had agreed to hold a topical discussion on this subject to be introduced by Mr. Boulton, the Clerk Assistant of the House of Commons in London. Mr. Boulton had circulated his note well in advance of the meeting, but had been unable to get away from Westminster for the spring session. His place had been taken by Mr. Pring among whose previous posts in the House of Commons had been that of Registrar of Members' Interests. He invited Mr. Pring to introduce the discussion.

M. Pring said that one of the greatest disappointments that a person could encounter in life was going to the theatre and finding that the principal actor was not taking part in that night's performance and that a substitute was taking his place. He was that substitute, and would speak to Mr. Boulton's paper. He continued by saying that it was an age-long requirement that Members of Parliament represented others and not themselves but inevitably the decisions of Parliament could have financial consequences for its Members. This created the possibility of a conflict of interest. In the House of Commons, for many years, a Member who spoke on a subject on which he had a financial interest was obliged to declare that interest. The public relations industry had become more and more significant recently and so it was particularly important that the honour of Members and the respect paid to them should remain untarnished. This required special emphasis on the declaration of interests. This was a problem encountered in most countries and he would be interested to hear how many other parliaments had a rule on the declaration of interests and whether Members had to declare their interests in relation to every aspect of their parliamentary activity.

Although declaration of interests had been a long standing requirement in the House of Commons, in 1974 the convention had been made more strict by the passing of a resolution, the text of which appeared on page 2 of the introductory note. This said that "in any debate or proceeding of the House or its Committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he *shall* disclose any relevant pecuniary interest or benefit of whatever nature whether direct or indirect that he may have had, may have or may be expected to have". It was significant that potential as well as current interests were included. The requirement to declare financial interests did not apply to minor matters such as the tabling of Questions. But some people might think that an interest should be declared in relation to all parliamentary proceedings. In the House of Commons no specific punishment was laid down for failure to declare an interest. An alleged case would be consi-

dered by the Committee of Privileges which would report to the House. The House would then have to decide what to do. In two cases, ten years previously, the House having considered the report from the Committee of Privileges and having heard the Members concerned, decided to expel one Member of Parliament and took no action against the other. Question (d) in the introductory note asked whether other parliaments had any fixed penalty for failure to declare an interest.

The declaration of an interest in debate enabled other Members present to know of the one Member's involvement. But a feeling had grown that a more public record was needed. So, in 1975, the House of Commons had resolved to introduce a public register of Member's Interests. Within four weeks of becoming a Member of Parliament, a Member was bound to declare his financial interests under nine different categories. These categories were reproduced in section 4 of the introductory note as follows:

1. Remunerated directorships of companies, public or private.
2. Remunerated employments or offices. Ministerial office and membership of the European Parliament, Council of Europe, Western European Union and the North Atlantic Assembly do not need to be registered.
3. Remunerated trades, professions or vocations.
4. The names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House.
5. Financial sponsorships, (a) as parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (b) as a Member of Parliament, by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect. This subsection includes gifts in relation to a Member's parliamentary duties, other than those received from abroad to which category 7 applies. It is, however, not necessary for a Member to register the fact that he is supported by his local constituency party.
6. Overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds. Overseas visits undertaken on behalf of the Inter Parliamentary Union, the Commonwealth Parliamentary Association, the Council of Europe, the Western European Union and the North Atlantic Assembly, or by any institution of the European Economic Communities need not be registered.
7. Any payments or any material benefits or advantages received from or on behalf of foreign Governments, organisations or persons.
8. Land and property of substantial value or from which a substantial income is derived. A Member's home need not be declared, unless he also receives an income from it.

9. The names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issues share capital.

Mr. Pring drew attention to an extract from the Register of Member's Interests which was annexed to the introductory note. It had not been easy to decide which interests should be disclosed and to what extent details should be given. Naturally, strong feelings were held about the rights of Members to personal privacy. It had been decided that the sources but not the amounts of income should be disclosed. This was the point mentioned in question (b) at the end of the introductory note.

A senior Officer of the House of Commons had been appointed as Registrar of Member's Interests. As the first holder of that post he had had to be in touch with every Member to explain about the Register when it was introduced. It was the duty of the Registrar to make sure that every Member was informed about the registration of interests and to advise members on difficult points which arose. If the Registrar disagreed with a Member about the disclosure of a particular interest, the Registrar had the power to insist that the point be referred to the Select Committee on Members' Interests. Other Members might complain to the Registrar that a Member had not fully declared his interests, and members of the public would also write in with allegations and complaints. The position of Registrar was a delicate one and in his work he needed the support of the small Select Committee.

In practice, in the House of Commons, one Member had consistently refused to register his interests on the grounds of constitutional principle. His opinion was that a Member who had been elected by his constituents to serve in the House of Commons could not be compelled by the House to register his interests subsequently. But this Member thought that such a provision would require legislation and not just a resolution of the House. Question (e) in the introductory note referred to this point. Question (f) raised the question whether registration of interests should apply to candidates at elections, because once a Member had been elected it could be argued that it was too late to find out about his interests.

In conclusion, Mr. Pring said that the combination of declaration and registration was regarded as a sufficient guarantee that Members of Parliament would not use their public position for private gain. He would be most interested to hear about the situation in other parliaments.

The President thanked Mr. Pring for his introductory remarks and invited Members to take part in the discussion.

Mr. Desrosiers (Canada) said that in the Canadian House of Commons the same rule on the declaration of interests applied as Mr. Pring had described, but there were no plans for the registration of interests. Ministers were subject to guidelines and had to declare the interests to a registrar who was a government official, even though this procedure did not have any legal status. After the recent election in Canada, over half the Members were new and many had expressed surprise that it did not have to make a general declaration or registration of their interests as municipal councillors had to do.

Mr. Guthrie (United States) said that the United States financial declaration law covered candidates as well as Representatives and Senators. By 15th May each

year candidates and members had to make a full disclosure of their finances, not in specific amounts of money but within different scales of dollars. The Clerk of the House of Representatives had to publish these declarations by 1st July and they were open for public inspection for 48 hours afterwards. He asked how often the Register of Members' Interests was published in the United Kingdom. The Ethics Committee in the House of Representatives was responsible for making rulings about what interests should be declared.

Mrs. Nersesian (United States) said the disclosure of interests had been introduced in the US Senate in 1968 and since 1977 the disclosures had been made public. This procedure had subsequently been included in federal law. An increasing problem in the United States was the financial interests of spouses which had come under more scrutiny recently. Spouses who considered their financial affairs completely separate from those of the Senator or Representative to whom they were married had been surprised by the attention given to them.

Mr. Tumangan (Philippines) described the situation in the Philippines, [which is set out in detail in the note provided as Appendix A]. In response to a question from the President about whether the sanctions for non-compliance were actually used in the Philippines he said that Members had occasionally to be reminded about possible conflicts of interest, and as a result had either withdrawn either from their parliamentary activity or from the financial interest.

Mr. Sherbini (Egypt) said that in his country a Member of Parliament had to submit a report on all his financial interests both at the beginning and the end of his membership, together with details of any changes in the intervening time. The information supplied remained secret, and was examined at the end of membership by a committee of senior judges. Civil or criminal proceedings could follow an unjustified change in a Member's interests during that period. The rules of procedure prevented Members from exploiting their membership to personal advantage. They could not be involved in government contracts, work for a foreign country or hold incompatible offices during their membership. If a member of their family, to the first degree, was involved in any such matter an interest had to be declared either to the assembly or to the committee before the Member took part in the discussion on that item. The assembly could use any of the penalties at its disposal against a Member who broke these rules. Candidates were not required to declare their interests before election.

Mr. Blake (Australia) summarised the position in Australia [which is set out in detail in Appendix B].

Mr. Hadjioannou (Cyprus) said that there was no obligation to disclose interests in Cyprus. Both the major parties had tabled bills to provide for disclosure but they had not been proceeded with. In a small country like Cyprus, a Member's other activities were fairly widely known anyway.

Mr. Lussier (Canada) said that there was no public register for the Canadian Senate. Under the Standing Orders, Senators had to declare their interests in legislation if they spoke during its passage through the Senate. Ministers were responsible to the Prime Minister for declaring their financial interests which were normally put into a blind trust during their tenure of office. The Secretary General, like senior permanent officials in government departments, had to declare his financial interests to the registrar who was a government official acting under the authority of the Prime Minister.

Mrs. Do Carmo Romao (Portugal) said that a 1983 law in Portugal required all public officials to declare their financial interests and this included Members of Parliament. They were obliged to declare their interests at the beginning and end of their membership of parliament but a declaration was made to a special tribunal. A failure to declare would lead to their resignation.

Mr. Mo (Norway) said there were no rules or practice concerning the registration of private interests in Norway. It was a small country with a small parliament and a Member's financial interests were generally known. The issue had never been of any importance. The press had drawn attention to the Prime Minister's receipt (while he was a Member of Parliament but before he became Prime Minister) of a half-salary from his former firm for consultative work done as a Member of Parliament. But a proposal that financial interests should be registered had not been accepted. There was some concern that registration might deter businessmen from standing for election to parliament.

Mr. Davies (United Kingdom) said that the House of Lords had no register but that Peers were expected to declare their interests in debate. Many members had outside jobs which would not be compatible with membership of the House of Commons. Many Peers were members of the boards of nationalised industries and were not prevented from speaking on a matter close to the board's responsibilities. Under the Addison rules, members of such boards were expected not to speak on aspects of the board's work which were probably the responsibility of ministers or to raise matters which could be construed as parliamentary interference in the running of the board.

Mr. Morosetti (Italy) said that in Italy both chambers had a register of interests, according to the law. Amounts of financial interests had to be declared at the beginning of each parliament and renewed each year. No specific sanctions were provided for non-compliance but there had been no cases of this to date. These matters were all covered by statute law rather than by resolution of the chambers and did not extend to candidates. In response to a question from the President, Mr. Morosetti confirmed that the annual income tax returns of people in public life in Italy were published anyway, but this related only to their income and not their capital assets. Such tax returns were annexed to the parliamentary declaration.

The President said that there was no provision for declaration of interests in the first chamber of the Netherlands parliament. In the second chamber there was no formal declaration but the Speaker had appealed to members to register any functions, whether paid or unpaid, which they performed in addition to being a Member of Parliament. Exact amounts involved were not given. Overseas visits other than at public expense had also to be declared to the Speaker. There was a voluntary register which was open to the public. There was no specified sanction for not registering, but the refusal to do so would be made known and disadvantageous public attention would follow. One Member had refused to register on the grounds of invasion of privacy. The Communist Party said it was no responsibility of the Speaker but their members declared their financial interests to the party leadership only. He invited Mr. Pring to sum up the debate.

Mr. Pring said that he was very grateful to those who had contributed to an interesting debate. Some important themes had been taken up. A difficult balance had to be struck between the private rights of Members and their public obliga-

tions. In small countries declaration of interests was less of an issue. As far as ministers were concerned, in the United Kingdom they were not allowed to have interests which could conflict with their public duties, but that was a matter for the government rather than for parliament. In response to Mr. Guthrie's question about the publication of the Register of Members' Interests he said that after the four-week period in which interests should be declared after an election, a Register was made available for inspection by the press and public in the House of Commons. It was subsequently printed and made available for sale. Any change in a Member's financial interests had to be registered within four weeks and this was noted on the master copy which was available for inspection. A revised version of the register was printed every year or so.

He recognised that the interests of spouses and family was a particularly difficult matter. In the United Kingdom family interests had only to be declared if they involved a sizeable proportion of the shareholding in a company. A list of items which had to be declared was not exclusive so Members could declare their spouses interests if they wanted to. The problem about candidates declaring their interests was that they might seem to have an advantage or a disadvantage in a contest against an incumbent. There were some sighs that the House of Commons was moving towards seeking declaration of interests of candidates. He was interested to hear that senior officials in some parliaments had to declare their interests. The financial interests of Members was a subject of current and continuing interest. He was grateful for the response to his introductory remarks. The papers would be passed on to Mr. Boulton and published in the journal.

The *President* thanked Mr. Pring for his contribution.

Appendix:

- A. The Financial interests of Members of the Batasang Pambansa of the Philippines.
- B. The Financial interests of Members of the Australian House of Representatives.
- C. The Financial interests of Members of the French National Assembly.
- D. The Financial interests of Members of the German Bundestag.

Appendix A

NOTE BY Mr. TUMANGAN DEPUTY SECRETARY GENERAL OF THE BATASANG PAMBANSA OF THE PHILIPPINES

The Financial Interests of Members of Parliaments

In the United Kingdom House of Commons, information on financial interest of parliament is obtained by two means to wit:

1. *ad hoc* declaration, relevant to the business in hand, and
2. general declaration in a public register of Members' Interest.

In the Philippines, the integrity of members of Parliament being of paramount importance, limitations and prohibitions relative to interest, whether financial or otherwise that may proved to be incompatible with their membership in the parliament, are embodied in the constitution. Thus adequate safeguards against possible direct or indirect financial interest or benefits to members of parliament are provided by the following provisions of the 1973 Constitution as follows:

1. Article VII — Batasang Pambansa

Sec. 8.1. No increase in salary shall take effect until after the expiration of the term of the Members of the Batasang Pambansa approving such increase.

2. The records and books of Accounts of the Batasang Pambansa shall be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually the itemized expenditures for each Member.

Sec. 10. A Member of the Batasang Pambansa shall not hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including Government-owned or controlled corporations, during his tenure except that of Prime Minister, Member of the Cabinet or the Executive Committee or Deputy Minister. Neither shall he, during the term for which he was elected, be appointed to any civil office which may have been created or the emoluments thereof increased while he was a Member of the Batasang Pambansa.

Sec. 11. No member of the Batasang Pambansa shall appear as counsel before any court in any civil case wherein the Government or any subdivision, agency or instrumentality thereof is the adverse party. Neither shall he directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any Government-owned or controlled corporation, during his term of office. He shall not accept employment to intervene in any cause or matter where he may be called upon to act an account of his office.

2. Article XV — General Provisions

Sec. 5. No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law, nor accept, without the consent of the Batasang Pambansa, any present emolument, office, or title of any kind from any foreign state..

It may be noted that while the United Kingdom requires information on any pecuniary interest of a member of Parliament to be declared by *ad-hoc* declaration and general declaration in a public register, the same procedure is not observed in the Philippines. The conditions under which members have been required to register their interests are areas where declaration is not possible in the Philippines because to so provide for declaration, will be tantamount to admission of guilt or violation of specific provisions of the Constitution or the Anti-Graft and Corrupt Practices Act. Excluding these prohibited areas however, declaration may be possible under the following subject matter:

1. land and property of substantial value or from which a substantial income is derived;
2. the names of companies or other bodies in which the member has, to his knowledge, either himself or with, or on behalf of his spouse or infant children, a beneficial interest in shareholding of a nominal value greater than one hundredth of the issues share capital.
3. overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the member or by public funds.

Considering the above enumerated areas where declaration is possible, the following questions may be considered:

1. Is a public register really justifiable?
2. Should the amounts of financial interest, as well as their nature, be declared?

In the light of Philippine experience, the requirement as to public register may be justified on the ground of public interest as well as the interest of the members of Parliament.

Presidential Decree 379 requires the submission of Statements of Assets, Liabilities and Networth by all persons whether natural or juridical having gross assets of 650,000 or more. Assets contemplated includes:

- a) real properties, stating therein the cost of acquisition and value of the asset;
- b) personal properties stating therein the cost of acquisition and the value of the asset. If used in trade or business, then depreciated value as of December 31, 1973 shall otherwise be included;
- c) properties acquired gratuitously.

The above law must however be considered in conjunction with Sec. 8 of Republic Act 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, which provides for the dismissal of a public official due to unexplained wealth to wit:

«If, in accordance with the provisions of Republic Act No. 1379, a public official has been found to have acquired during his incumbency, whether in his

name, or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse, and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section notwithstanding any provision of law to the contrary.»

It is to be noted, however, that the Statement of Assets and Liabilities when submitted, is treated as a confidential document. Hence, where a member of Parliament is required to declare in a public register information related to his land and property of substantial value, or from which a substantial income is derived, the information will facilitate prosecution of erring members for violation of the unexplained wealth provision of the Anti-Graft and Corrupt Practices Act.

Likewise the declaration in a public register may also be viewed from the perspective of the better interest and welfare of the members of Parliament themselves. If the members' financial standing is open for public scrutiny, imputations and speculations, malicious or otherwise, that may tend to put a cloud on the integrity of a member will be lessened. An accuser would have to proceed with care before making any charges where educated conclusions and reconciliation are possible between the financial standing of a member and his "apparent wealth" or "extravagance."

3. Should there be a specific declaration of interest when voting or when tabling motions, Bills, Amendments and questions?

A declaration in a public register may be deemed sufficient for all official acts of a member of Parliament. The presumption that public officers will discharge their several trust with fidelity must not be overlooked. If at all, the public need not be reminded time and again about a member's interesting everytime an act is to be done. To require specific declaration might unduly prolong proceedings. Moreover, the Batasang Pambansa has a committee on Privileges responsible for all matters relative to the conduct, rights, privileges, safety, dignity, integrity and reputation of the Batasang Pambansa.

4. What sanctions should there be in cases of non-compliance?

Section 7 (3) Article VIII of the Philippine Constitution provides that: "the Batasang Pambansa *may determine the rules of its proceedings*, punish its members for disorderly behavior, and with the concurrence of 2/3 of all its members, *suspend or expel* a member, but if the penalty is suspension, this shall not exceed 60 days."

5. Does the Parliament have power to introduce a compulsory scheme of declaration by Resolution, or would a statute be required?

Section 7(3) of Article VIII of the Philippines Constitution provides that the Batasang Pambansa may determine the rules of its proceedings. Nowhere in the provision is there a specification as to the form it will take. It is however believed that a Resolution may be sufficient for the purpose because its intention is merely to carry out or establish rules governing the internal affairs of the legislative body.

6. Should candidates at Parliamentary Elections be required to declare their interests?

Requiring candidates at Parliamentary Elections to declare their interests is both a novel and meritorious possibility. Requiring candidates to declare their interest will afford the constituents a better opportunity to assess not only the qualifications of the candidate over the other. The constituents would thus be in a better position to balance both the qualifications vis-à-vis the interest of the candidates for a more careful selection of their candidates.

Appendix B

NOTE BY THE CLERK OF THE AUSTRALIAN HOUSE OF REPRESENTATIVES

The Financial Interests of Members of Parliament

Standing Order 196

Standing Order 326

Chronology of events

- 1974 A joint committee was established to inquire into whether arrangements should be made relative to the declaration of the interests of Members. The Committee recommended a system of registration of interests somewhat along the lines of the system introduced in the United Kingdom House of Commons in 1975.
- 1975 Notices of motion to give effect to the Committee's recommendations lapsed with the dissolution of both Houses in that year.
- 1976 Fresh notices of motion to give effect to the recommendations of the joint committee were given and again lapsed in 1977.
- 1978 A Committee of Inquiry into Public Duty and Private Interest chaired by the Chief Justice of the Federal Court of Australia, Sir Nigel Bowen (who was also a former Attorney-General and a former Minister for External Affairs) was established.
- 1979 The Committee of Inquiry concluded that there was insufficient justification at that time to introduce a compulsory system of registration of interests. It recommended the adoption of a Code of Conduct which included a requirement for *ad hoc* declarations of interest for all Members. It went on to recommend that a system of registration of Ministers' interests should continue. No immediate action was taken to give effect to these recommendations.
- 1983 September—The recently elected Prime Minister made a ministerial statement informing the House of the Government's policy on the disclosure of private pecuniary interests by Ministers, Members of Parliament, public servants and others and tabled statements by Ministers of the private interests of themselves and of their families. A second series of statements by Ministers declaring the values of individual interests

was provided to the Prime Minister on a confidential basis (as has been the practice since 1976).

October—Both the House of Representatives and the Senate adopted resolutions—

- noting that copies of Ministers' statements had been tabled in the Parliament;
- expressing the opinion that *all Members* should provide similar statements of their private interests, including those of their families of which they were aware (covering a wide-ranging number of matters);
- agreeing that a public register of Members' interests should be established;
- agreeing that Members should provide statements on an annual basis and notify any alterations in circumstances;
- agreeing that, notwithstanding the lodgement of statements, Members should declare any relevant interest if they participate in debate in the House or vote in a division in the House.
- requesting the Standing Orders Committee to consider and report upon what changes to the standing orders are required to give effect to these matters and the desirability of adopting other provisions contained in the 1979 report of the committee of inquiry, particularly a Code of Conduct.

1984 June—the House of Representatives Standing Orders Committee recommended (in summary)—

- (a) the establishment of a Committee to consider the arrangements to be made and the way in which the Register is compiled;
- (b) that the arrangements for registration of interests should not be included in the standing orders but that instead the House should adopt appropriate resolutions;
- (c) that in addition to the registration of interests, Members should declare any relevant interest as soon as practicable if they participate or vote in proceedings in the House, committee of the whole House or a committee of the House (or a joint committee). A dissenting report signed by all Opposition members of the Standing Orders Committee stated that while there was an obvious need for Ministers to provide the Prime Minister with details of their interests, they saw no similar need nor justification in the case of Members who were not Ministers. They took strong objection to the requirement that Members should provide details of the interests of their spouses and dependent children, adding that this was an indefensible invasion of their privacy.

October—the House of Representatives adopted—

1. a standing order establishing a Committee of Members' Interests to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests and generally to supervise the registration requirements (Members were appointed in October 1984 but the committee did not meet before the dissolution of the House), and
2. resolutions—

- (a) requiring a Member to register his or her interests and those of which he or she was aware of his or her spouse and children who were wholly or mainly dependent on the Member for support;
- (b) requiring Members' statements to be provided on an annual basis and alterations to be notified within 28 days of the alteration occurring;
- (c) requiring the Chairman of the Committee of Members' Interests to table the completed returns and notifications of alterations;
- (d) providing for the appointment of an officer of the House of Representatives as Registrar of Members' Interests and Clerk to the Committee, and
- (e) requiring Members to also declare any relevant interest if they participated in debate, or voted in, the House, committee of the whole House or a committee (of the House or of both Houses).

The resolutions had effect from the commencement of the new Parliament on 21 February 1985. Members were required to provide their statements within 28 days of that date in a form determined by the Committee of Members' Interests. As at the time of preparation of these notes, nominations for all members of the committee had not been received, and a form had not been approved. Details of the matters to be registered are contained in the attached resolution of the House.

Suggested points for discussion

(a) *Is a public Register really justifiable*

The Committee of inquiry into Public Duty and Private Interests (the Bowen Committee) dealt with this question in considerable depth. It concluded that—

"there is insufficient justification at the present time to introduce a system of compulsory registration of office-holders' interests. Instead, reliance should be placed on the Code of Conduct recommended for adoption..."

However, the new ALP Government elected in 1983 introduced the registration requirements effective from the commencement of the 34th Parliament on 21 February 1985.

(b) *Should the amounts of financial interests, as well as their nature, be declared*

It will be noted that the resolutions adopted by the House in October 1984 do not provide for the disclosure of amounts other than in respect of

"partnerships, indicating the nature of the interests, the activities of the partnership and the total amounts of its assets and liabilities".

Any requirement to provide actual amounts of financial interests would appear to be an unjustifiable invasion of privacy. However, in the case of Ministers it has been the practice since 1976 for Ministers to provide the Prime Minister, on a *confidential* basis, with *details* of their financial interests.

In so far as "the nature" of any interests is concerned, the requirements set down in the House resolutions of 9 October 1984 a.m. leave little room for

uncertainty about the nature of the financial interests which are to be required to be registered.

(c) *Should there be a specific declaration of interest when voting or when tabling motions, bills, amendments and questions*

The resolutions adopted by the House of Representatives on 9 October 1984 a.m. provide:

That, notwithstanding the lodgement by a Member of a statement of the Members' registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest—

- (a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and
- (b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and

the declaration shall be recorded and indexed in the *Votes and Proceedings* or minutes of proceedings (as applicable) and in any *Hansard* report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143.

House of Representatives standing order 196 provides that:

"No Member shall be entitled to vote in any division upon a question (not being a matter of public policy) in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. The vote of a member may not be challenged except on a substantive motion moved immediately after the division is completed, and the vote of a Member determined to be so interested shall be disallowed."

No conflict is seen in respect of the new resolution and the existing standing order. Additionally, in many respects, the requirement for ad hoc declarations during proceedings or when voting is seen as being more effective than the inclusion of interests in a compulsory register.

(d) *What sanctions should there be in cases of non-compliance*

It is noted that the Clerk of the United Kingdom House of Commons giving evidence to the Commons Select Committee on Members' Interest (Declaration) stated that:

"the ultimate sanction behind the obligation upon Members to register would be the fact that it was imposed by resolution of the House... There can be no doubt that the House might consider a refusal to register as required by its resolutions or the wilful furnishing of misleading or false information to be a

o contempt. The sanction of possible penal jurisdiction by the House should be sufficient."

The House of Representatives Standing Orders Committee was mindful of this evidence when bringing down its report recommending the adoption of resolutions requiring the registration and declaration of interests. It did not recommend, nor did the House provide, any sanctions for non-compliance. Should Opposition members maintain their position opposing the registration requirements the possibility of sanctions may arise in the House of Representatives.

(e) *Does your Parliament have power to introduce a compulsory scheme of declaration by resolution, or would a statute be required*

On 9 October 1984 a.m. the House of Representatives adopted resolutions requiring the registration and declaration of interests. (The Senate has not done so). Passage of legislation was considered as an alternative to the resolutions but this option which has been followed in some Australian States was rejected by the House of Representatives Standing Orders Committee in favour of resolutions.

(f) *Should candidates at Parliamentary elections be required to declare their interests*

This matter was considered by both the Joint Committee in 1974 and the Committee of Inquiry in 1978-79. The Joint Committee recorded its view that legislation could be validly enacted to require candidates to disclose their interests but did not make a recommendation on the subject. The Committee of Inquiry recommended against the requirement.

The arguments in support of a requirement that candidates register their interests are

- it would inform the electors, who could make better choices as a consequence;
- it would ensure fair competition between incumbents and new candidates—assuming that disclosure is a handicap;
- it would treat new candidates equally with incumbents.

Against these arguments it could be claimed that disclosure would not operate as an electoral handicap. It may be an advantage, and if so, if incumbents to have to register their interests, challengers are likely to disclose their interests voluntarily.

Another matter to be considered if registration of candidate's interests was required is what would be the consequences of non-compliance. If a return was required, should failure to lodge an acceptable return have any effect on the result of the election in that division? Should a successful candidate be unseated for his own defective return, or should his election be imperilled by a defective return from some other candidate? If the only sanction was a fine, some candidates might choose to risk a small fine for a better chance of winning, if they thought disclosure was a handicap.

Whilst it is appreciated that in the United States of America candidates are required to disclose interests as soon as they become avowed candidates, it is felt

that there is little support for such a move in Australia. There certainly is no current proposal that this should become a requirement.

Recent amendments to electoral legislation have provided that details of donors of \$1000 or more to a political party or of \$200 or more to a candidate for election purposes shall be furnished in a return on an approved form to the Electoral Commission. Significant financial penalties were set for non-compliance within a specified time.

DECLARATION AND REGISTRATION OF MEMBERS' INTERESTS

Resolutions adopted by the House of Representatives
on 9 October 1984, a.m.

That the following resolutions relating to the registration and declaration of Members' interests be adopted, such resolutions to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament:

1. Declaration of Members' interests

That within 28 days of making and subscribing an oath or affirmation as a Member of the House of Representatives and within 28 days after the commencement of the first period of sittings in each subsequent calendar year while remaining a Member of the House of Representatives, each Member shall provide to the Registrar of Members' Interests, a statement of—

1. the Member's registrable interests, and
2. the registrable interests of which the Member is aware (a) of the Member's spouse and (b) of any children who are wholly or mainly dependent on the Member for support,

in accordance with resolution adopted by the House and in a form determined by the Committee of Members' Interests from time to time, and shall also notify any alteration of those interests to the Registrar within 28 days of that alteration occurring.

2. Registrable interests

That the statement of a Member's registrable interests to be provided by a Member shall include the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and shall cover the following matters:

- (a) shareholdings in public and private companies (including holding companies) indicating the name of the company or companies;
- (b) family and business trusts and nominee companies—
 - (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
 - (ii) in which the Member, the Member's spouse, or a child who is wholly or mainly dependent on the Member for support, is a trustee, indicating the name of the trust, the nature of its operation and the beneficiary of the trust;

- (c) real estate, including the location (suburb or area only) and the purpose for which it is owned;
- (d) interests in companies to be determined by the Committee of Members' Interest;
- (e) partnerships, indicating the nature of the interests, the activities of the partnership and the total amounts of its assets and liabilities;
- (f) liabilities (excluding short-term credit arrangements) indicating the nature of the liability and the creditor concerned;
- (g) the nature of any bonds, debentures and like investments;
- (h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;
- (i) the nature of any other assets (including collections, but excluding household and personal effects) each valued at over \$5000;
- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources;
- (l) any sponsored travel or hospitality received, and
- (m) any other interests, such as membership of organisations, where a conflict of interests with a Member's public duties could foreseeably arise or be seen to arise.

3. Register and Registrar of Members' Interests

That-

- (a) at the commencement of each parliament, and at other times as necessary, Mr. Speaker shall appoint and officer of the Department of the House of Representatives as the Registrar of Members' Interests and that officer shall also be clerk to the Committee of Members' Interests;
- (b) the Registrar of Members' Interests shall, in accordance with procedures determined by the Committee of Members' Interests, maintain a Register of Members' Interests in a form to be determined by that committee from time to time;
- (c) as soon as possible after the commencement of each Parliament and in each subsequent calendar year during the life of that Parliament, the chairman of the Committee of Members' Interests shall table in the House a copy of the completed Register of Members' Interest and shall also table from time to time as required any notification by a Member of alteration of those interests, and
- (d) the Register of Members' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Members' Interests from time to time.

4. Declaration of interest in debate and other proceedings

That, notwithstanding the lodgement by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that

statement in a Register of Members' Interests, a Member shall declare any relevant interest—

- (a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and
- (b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and

the declaration shall be recorded and indexed in the *Votes and Proceedings* or minutes of proceedings (as applicable) and in any *Hansard* report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143.

COMMITTEE OF MEMBER' INTERESTS

NEW STANDING ORDER 28A ADOPTED BY THE HOUSE OF REPRESENTATIVES ON 9 OCTOBER 1984, a.m.

Committee of Members' Interests

28A. (a) A Committee of Members' Interests shall be appointed at the commencement of each Parliament—

- (i) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a Register of Members' Interests;
- (ii) to consider any proposals made by Member and others as to the form and content of the register;
- (iii) to consider any specific complaints made in relation to the registering or declaring of interests;
- (iv) to consider what changes to any code of conduct adopted by the House are necessary or desirable;
- (v) to consider what classes of person (if any) other than Members ought to be required to register and declare their interests, and
- (vi) to make recommendations upon these and any other matters which are relevant.

(b) The committee shall consist of 7 members, 4 Members to be nominated by either the Prime Minister, the Leader of the House or the Government Whip and 3 Members to be nominated by either the Leader of the Opposition, the Deputy Leader of the Opposition or the Opposition Whip.

Provided that, where the Opposition is composed of 2 parties, the committee shall consist of 4 Members to be nominated by either the Prime Minister, the Leader of the House of the Government Whip, 2 Members to be nominated by either the Leader of the Opposition, the Deputy Leader of the opposition or the Opposition Whip, and 1 Member to be nominated by either the Leader of the Third Party, the Deputy Leader of the Third Party or the Third Party Whip.

(c) The committee shall elect as chairman of the committee one of the Members nominated either by the Prime Minister, the Leader of the House or the Government Whip.

(d) The committee shall have power to send for persons, papers and records but shall not exercise that power, nor undertake an investigation of the private interests of any person, unless approved by not less than 4 members of the committee other than the chairman.

(e) The committee shall have power to confer with a similar committee of the Senate.

(f) The committee shall, as soon as practicable after 31 December in each year, prepare and table in the House a report on its operations during that year and shall also have power to report from time to time.

Appendix C

NOTE BY Mr. AMIOT, SECRETARY GENERAL, FRENCH NATIONAL ASSEMBLY

Financial Interests of Members of Parliament

In France there is no form of income, in the precise sense of the word, which is incompatible with membership of parliament. Certain posts or professions are incompatible, according to basic law no. 58-998 of 24 October 1958, (amended)*

The two following principles apply: —

1. Members declare to the Bureau of the Assembly or the Senate the posts they hold and intend to continue. They give up any incompatible posts or professions.
2. There is no requirement to declare income from posts or professions which are compatible with membership of parliament.

*
* *

* Incompatible posts:

- membership of both the Assembly and the Senate
- membership of the Government, the Economic Council or the Constitutional Council
- non-elected public service posts (except university professors)

Incompatible professions: being Chairman or a member of the administrative council, director general of a national or public industry, or of organisation receiving subsidies seeking support from the public purse or working for the State or a public enterprise.

Appendix D

NOTE BY Dr. JOSEPH BÜCKER, DIRECTOR OF THE GERMAN BUNDESTAG

Members' Interests in the German Bundestag

1. General Points

In contrast to Great Britain, a lively discussion has recently taken place in the German Bundestag and also in the German press on the overall issue of Members' interests. This discussion is concerned with a reform of the Code of Conduct adopted by the German Bundestag in 1972. The relevant provisions are appended to the Rules of Procedure. The Code contains a catalogue of cases in which Members are obliged to provide information, the prohibition to accept, in specified instances, remuneration, and rules governing the procedure in the event of nonobservance of the individual provisions. As regards its form and contents, this Code of Conduct has for some time now been widely considered to be inadequate. A special commission of the Council of Elders has therefore been charged with elaborating proposals for amendments.

2. Answers to the questions in the Introductory Note by Clifford Boulton

- a) As yet there is no public register in the German Bundestag such as that in the British House of Commons. Rather, information which a Member is obliged to furnish is published in the Official Handbook, in the curriculum vitae of the Member concerned. Let me, however, emphasize that, pursuant to the regulations applicable up to now, a great deal of the information provided by Members is treated confidentially. Only the President and the four Vice-Presidents are notified of these confidential data. In the present discussion on a reform there appears, however, to be a tendency towards extending the obligation to publish the information furnished.
- b) Hitherto the Members of the German Bundestag have had to declare their incomes only in certain special cases, for example income derived from subsidiary activities, but not from their occupation or from functions in company bodies. Moreover, such information is treated confidentially. Whether this obligation to provide information should be extended to all income is another main point under discussion in the current reform debate. The result of this discussion can hardly be predicted at present. What is certain is only that there is very strong resistance to incomes being published.
- c) The instrument of ad-hoc declarations exists in the German Bundestag only for committee deliberations; in the plenary, by contrast, such declarations are unknown.

- d) The question of sanctions is of course particularly delicate. The only sanction provided for by the current regulations is that the Presidium can, having established that a Member has violated the Code of Conduct, publish its findings. So far this has never occurred in practice. Lately an extension of this possibility of imposing sanctions has been contemplated by some, for example by curtailing the Member's emoluments. However, the main focus continues to be on publication of the decision of the Presidium. Such a measure is widely considered to be most in line with the democratic and parliamentary system.
- e) As I have already mentioned, as yet the Code of Conduct is merely annexed to the Rules of Procedure of the German Bundestag. Doubts continue to be expressed about the constitutionality of this state of affairs, however. Thus there is today a broad consensus in favour of carrying out the possible revision in the form of a law. The inclusion of provisions in the Law on the Legal Status of members of the German Bundestag is being contemplated. This law mainly governs the remuneration of Members.
- f) As yet candidates are not obliged to furnish information; nor is a change to this effect being considered in the debate on a reform. Rather, one generally relies on all facts of interest to the public becoming known during the election campaign.

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Published by the Association of Secretaries General of Parliaments, under the auspices of the Inter-Parliamentary Union, is issued quarterly in both English and French.

	Swiss francs
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