

# 立法會

## *Legislative Council*

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### **Paper for the House Committee meeting on 15 October 2004**

#### **Relevant rules in the Rules of Procedure relating to the conduct of Members and the existing arrangements for handling complaints relating to Members' conduct**

#### **Purpose**

This paper sets out the relevant rules in the Rule of Procedure relating to the conduct of Members of the Legislative Council (LegCo) and the existing arrangements for handling complaints relating to Members' conduct.

#### **Conduct of Members during meetings**

2. Regarding order at meetings of the Council, standing committees and select committees, Rules 44 and 45 of the Rules of Procedure are relevant. They provide that -

##### **“44. Decision of Chair Final**

The President in Council, the Chairman of a committee of the whole Council or the chairman of any standing or select committee shall be responsible for the observance of the rules of order in the Council and committee respectively. His decision on a point of order shall be final.

##### **45. Order in Council and Committee**

(1) The President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee, after having called the attention of the Council or the committee to the conduct of a Member who persists in irrelevance or tedious repetition of his own or other Members' arguments in the debate, may direct him to discontinue his speech.

- (2) The President, the Chairman of a committee of the whole Council or the chairman of any standing or select committee shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting; and the Clerk or clerks of any committees shall act on orders received by him from the Chair to ensure compliance with this order.”
3. There are three standing committees of the Council. They are -
- (a) the Finance Committee (Rule 71(1) of the Rules of Procedure);
  - (b) the Public Accounts Committee (Rule 72(1) of the Rules of Procedure); and
  - (c) the Committee on Members’ Interests (CMI) (Rule 73(1) of the Rules of Procedure).
4. In the Rules of Procedure, there are other provisions which govern the conduct of Members during meetings. These provisions prescribe certain standards of behaviour, for example, Rules 36(1) to (4), 39, 41 and 42. In relation to rules which regulate Member’s behaviour when speaking or seeking to speak, the President may decide not to call a Member to speak or to discontinue the Member from speaking. However, in relation to standard of behaviour which falls below the standards provided by Rule 42, the Rules of Procedure do not provide the President with any express power to penalize the Member concerned.
5. In relation to misbehaviour outside of the meetings of the Council or its standing or select committees which relate to specific prohibition or requirements imposed by the Rules of Procedure, sanctions against such misbehaviour are provided in Rules 81(2) (Premature Publication of Evidence) and 85 (Sanctions relating to Interests).
6. The extracts of the Rules referred to in paragraphs 4 and 5 above are in Appendix I.

**Complaints relating to Members’ registration and declaration of Members’ interests**

7. As provided in Rule 73(1)(c) of the Rules of Procedure, CMI has responsibilities, among others, for considering and investigating any complaints made in relation to the registration and declaration of Members’ interests or any complaint of a failure to do so.

8. CMI also has responsibility, under Rule 73(1)(d), for considering matters of ethics in relation to the conduct of Members in their capacity as such, and giving advice and issuing guidelines on such matters. Pursuant to this Rule, CMI has issued “Advisory Guidelines on Matters of Ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such” (Appendix II refers). The Guidelines have not been issued to Members of the current LegCo.

9. While it is within the terms of reference of CMI to consider matters of ethics in relation to the conduct of Members in their capacity as such and to give advice and issue guidelines on such matters, CMI has no power to carry out formal investigation into complaints about Members’ misconduct other than that mentioned in paragraph 7 above. Moreover, CMI does not have the function or power to determine whether the conduct of a Member in a particular case is appropriate or of a high or low ethical standard, although in the process of performing the function of giving advice and issuing guidelines it may become necessary for CMI to consider a particular incident in the context of its performing that function.

### **Complaints about improper use of Members’ Operating Expenses Reimbursements**

10. Under the existing arrangements, if there are complaints lodged with the LegCo Secretariat alleging the improper use of the Operating Expenses Reimbursements or if the LegCo Secretariat considers that a Member’s claim for reimbursements appears not to have been made in accordance with the “Guide for Reimbursement of Operating Expenses for Members of the Legislative Council”, the LegCo Secretariat will seek clarification or explanation from the Member concerned. On receipt of satisfactory clarification or explanation of the matter concerned, the LegCo Secretariat will not take any further action on the matter. If, on clarification, some expenses claimed are found to be not in accordance with the requirements of the Guide, the Member concerned will have to refund the excess amount claimed, if reimbursement has been made.

### **Disqualification of Member from Office on the ground of misconduct**

11. Where a Member considers that a particular conduct of another Member constitutes misbehaviour and should be censured under Article 79(7) of the Basic Law, he may move a motion under Rule 49B(1A) of the Rules of Procedure. The matter will then be referred to an investigation committee unless the Council orders otherwise. As stipulated in Rule 30(1A), a motion under Rule 49B(1A) needs to be sponsored by three other Members of the

Council, apart from the mover of the motion. This more stringent requirement of four Members aims to deter frivolous allegations against Members and abuse of the mechanism, while at the same time not unfairly restricting the right of Members of the Council who are in the minority to initiate action under Article 79(7).

12. The rationale for not referring the matter to a committee immediately upon the receipt of the motion by the Council is also to avoid abuse of the mechanism. The motion should be moved before any formal proceedings are taken on the matter. The debate on the motion, once moved, will stand adjourned and be referred to an investigation committee to be appointed by the President. Any Member who disagrees with the referral may move without notice that no investigation is required. If this motion of not referring the matter to an investigation committee is agreed to by the Council, the original motion will not be proceeded with. The reason for not proceeding with the original motion is to ensure that a motion for the censure of a Member under Article 79(7) is debated only after an investigation into the allegation has been completed. The provision to dispense with the investigation is to allow the Council an opportunity to dispose of allegations which the Council does not wish to pursue.

13. The constitution and procedure of an investigation committee is provided in Rule 73A. Investigation committees are established on a case-by-case basis. The functions of an investigation committee are to establish the facts of the case and to give its view on whether or not the facts constitute grounds for censure. In the absence of a definition of “misbehaviour” within the context of Article 79(7), it may also be necessary for the investigation committee to give its view in this respect. Upon completion of the investigation process, the investigation committee will table its report in Council which will serve as a reference for Members. The decision of whether or not the Member should be censured, hence disqualified from office, rests with the Council, by a two-thirds majority vote of the Members present.

### **Members’ advice**

14. Members are invited to note this paper.

Council Business Division 2  
Legislative Council Secretariat

14 October 2004

(8)HC-paper

**Extract from the Rules of Procedure**

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**36. Time and Manner of Speaking**

(1) A Member shall speak standing and shall address his observations to the President or Chairman.

(2) When the President or Chairman rises, during proceedings in Council or in committee of the whole Council, every Member shall be seated.

(3) If two or more Members indicate their intention to speak at the same time, the President or Chairman shall select one Member and call on him to speak. *(L.N. 107 of 1999)*

(4) When a Member has finished speaking he shall resume his seat and the President or Chairman shall thereupon call such other Members who indicate or have indicated their intention to speak. *(L.N. 107 of 1999)*

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**39. Interruptions**

A Member shall not interrupt another Member, except –

(a) by rising to a point of order, when the Member speaking shall resume his seat and the Member interrupting shall direct attention to the point which he wishes to bring to notice and submit it to the President or Chairman for decision; or

(b) to seek elucidation of some matter raised by that Member in the course of his speech, if the Member speaking is willing to give way and resume his seat and the Member wishing to interrupt is called by the President or Chairman.

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#### **41. Contents of Speeches**

(1) A Member shall restrict his observations to the subject under discussion and shall not introduce matter irrelevant to that subject.

(2) Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case.

(3) Except as otherwise provided in Rule 66 (Bills Returned for Reconsideration), it shall be out of order to attempt to reconsider a specific question on which the Council has taken a decision during the session, except in debate on a motion to rescind that decision moved with the permission of the President.

(4) It shall be out of order to use offensive and insulting language about Members of the Council.

(5) A Member shall not impute improper motives to another Member.

(6) The name of the Chief Executive shall not be used to influence the Council.

(7) Except where his conduct is the subject of a motion to which Part JA (Procedures for Particular Motions) applies, the conduct of the Chief Executive, a Member of the Executive Council or a Member of the Legislative Council otherwise than in the performance of his official duties shall not be raised. *(L.N. 311 of 1998)*

(8) The conduct of Judges or other persons performing judicial functions shall not be raised.

#### **42. Behaviour of Members during Meeting**

During a meeting of the Council –

(a) all Members shall enter or leave the Council properly attired and with decorum;

(b) no Member shall cross the floor of the Council unnecessarily;

(c) Members shall not read newspapers, books, letters or other documents, except such matter therein as may be directly connected with the business of the Council; and

- (d) while a Member is speaking all other Members shall be silent and shall not make unseemly interruptions.

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**81. Premature Publication of Evidence**

(1) The evidence taken before a committee under Rule 80 (Attendance of Witness) and documents presented to the committee shall not, except in the case of meetings of the committee held in public, be published by a member of the committee or by any other person before the committee has presented its report to the Council. *(L.N. 107 of 1999)*

(2) Any member of the committee who fails to comply with subrule (1) may be admonished or reprimanded by the Council on a motion to that effect.

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**85. Sanctions relating to Interests**

Any Member who fails to comply with Rules 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) may be admonished, reprimanded or suspended by the Council on a motion to that effect. *(L.N. 126 of 2002)*

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**Advisory Guidelines on Matters of Ethics  
in relation to the conduct of Members of  
the Legislative Council of  
the Hong Kong Special Administrative Region  
in their capacity as such**

*(Issued by the Committee on Members' Interests under  
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

**I. General Standards**

- (1) (a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
  - (b) A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
- (2) A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.

**II. Specific Standards**

- (3) In accordance with Rules 83A, 84(1) and 84(1A) —

- (a) In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.
  - (b) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
  - (c) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
- (4) In accordance with Rule 83 and guidance notes issued by the Committee on Members' Interests, a Member shall register particulars of registrable interests listed below:—
- (a) remunerated directorships of companies, public or private;
  - (b) remunerated employments, offices, trades, professions or vocations;
  - (c) 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 Council;
  - (d) (i) all donations, as a candidate in the Legislative Council election in which the Member was elected as a Member of the Council, received by the Member or any person on his behalf for the purpose of meeting the Member's election expenses in the election; or
  - (ii) financial sponsorships, as a Member of the Council, by any person or organization, stating whether any such sponsorships include any payment or any material benefit or advantage to the Member or his spouse, whether direct or indirect;

- (e) overseas visits made by the Member or his spouse relating to or arising out of membership of the Council where the cost of any such visit has not been wholly borne by the Member or public funds;
  - (f) any payments or any material benefits or advantages received by the Member or his spouse arising out of his membership of the Council from or on behalf of:
    - (i) any government or organization of a place outside Hong Kong; or
    - (ii) any person who is not a Hong Kong permanent resident;
  - (g) land and property;
  - (h) 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 issued share capital.
- (5) A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
- (6) (a) A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.
- (b) A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.
- (7) A Member should not use any part of his Operating Expenses Reimbursement or District Office Allowance for purposes other than those in connection with the business of the Council.