

立法會
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Committee on Members' Interests
Paper for the first meeting on 20 November 2008

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

Purpose

This paper invites members to consider the draft “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” (Advisory Guidelines) for issue to Members of the Fourth Legislative Council (LegCo).

Background

2. Under Rule 73(1)(d) of the Rules of Procedure (RoP), one of the functions of the Committee on Members' Interests (CMI) is 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”. Since 1996, it has been the practice of CMI to adopt a set of advisory guidelines on matters of ethics in relation to the conduct of Members in their capacity as such at the start of each legislative term and issue it to all Members for their reference.

3. The first set of Advisory Guidelines was issued to all Member in June 1996, after the Council negated the proposal of CMI in April 1996 to empower CMI to consider and investigate complaints about Members' misconduct. This was the second time the motion to provide CMI with such power was defeated in the Council. The first defeat was in July 1995. At that time, despite some Members' concern about the need to monitor the conduct of Members, there was no consensus among Members on whether a formal mechanism should be introduced to investigate Members for misconduct. Nevertheless, in the course of CMI's work, having regard to the practices of the

legislatures in other places for monitoring the conduct of legislators, a set of guidelines was drawn up, setting out the general and specific standards of conduct expected of Members in dealing with LegCo business. Following the defeat of the motion in April 1996, CMI decided that this set of guidelines should be issued to Members for their reference. The guidelines, which were named as the “Advisory Guidelines”, were intended for Members’ reference only.

4. The Advisory Guidelines were refined in each subsequent LegCo term with textual amendments and issued to all Members at the start of the new term. In the 2004-2005 session, after deliberation on an e-mail message it received from a member of the public raising doubts about the academic standing of the educational qualifications claimed by a Member on the LegCo web site, CMI of the Third LegCo decided to revise the Advisory Guidelines by adding new paragraph (8). The new paragraph read “a Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true”. The Advisory Guidelines adopted by the Third LegCo are in the **Appendix**.

The scope of Advisory Guidelines

5. The Advisory Guidelines only serve as a reference for Members. It is generally accepted by Members that it is difficult to define what “proper conduct” means. The Advisory Guidelines provide general standards on the conduct of Members, such as the principles on Members’ behaviours and factors to consider before engagement in commercial activities (paragraphs (1) and (2)). The Advisory Guidelines also set out specific standards on the declaration of pecuniary interest and registration of registrable interests (paragraphs (3) and (4)), on the principle that a Member should refrain from taking advantage of the capacity as a Member for furtherance of his private interest (paragraphs (5) and (6)), on the use of the Operating Expenses Reimbursement (OER) and District Office Allowance (paragraph (7)), and on the truthfulness of personal information provided to the Council (paragraph (8)).

Recent development and recommendations of the Secretariat

6. In June 2006, CMI completed a study on the establishment of a mechanism for handling complaints concerning Members’ OER claims or applications for advance of operating funds (fund-advance applications). At the Council meeting of 5 July 2006, RoP were amended to clearly set out the specific conduct expected of a Member in making OER claims or fund-advance applications (RoP 83AA), to empower CMI to consider and investigate any complaints concerning OER claims or fund-advance applications (RoP 73(1)(ca)), to require CMI to have regard, in handling complaints concerning OER claims or fund-advance applications, to the provisions of the guide for OER claims issued

by the Secretariat (RoP 73(1A)), and to provide for sanctions of a Member who failed to comply with the rule on making OER claims or fund-advance applications (RoP 85). The “Procedure for Handling Complaints Received in Relation to the Registration and Declaration of Members’ Interests” (the Procedure) was also revised to include the handling of complaints concerning Members’ OER claims or fund-advance applications. The revised Procedure also included new features to enhance fairness to the Member under complaint as well as tighten up the confidentiality requirement. For details, please refer to paragraph 8 of LC Paper No. CMI/6/08-09.

7. Members are invited to note that the substance of paragraphs (3) and (4) of the Advisory Guidelines has already been reflected in RoP 83 (Registration of interests), 83A (Personal Pecuniary Interest to be Disclosed) and 84(1) and (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) since 1999. As sanctions for failure to comply with any of these rules are already provided in RoP 85, it is recommended that paragraphs (3) and (4) therefore be removed from this Advisory Guidelines.

8. In addition, in view of the provision of a mechanism to deal with the specific conduct in making claims for reimbursement of OER or fund-advance applications as referred to in paragraph 6 above, it is recommended that paragraph (7) should be removed from this Advisory Guidelines.

Advice sought

9. Subject to members’ endorsement of the recommendations in paragraphs 7 and 8 above, members are invited to consider issuing the revised Advisory Guidelines to all Members.

Council Business Division 3
Legislative Council Secretariat
17 November 2008

**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.

- (8) A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

October 2005