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Committee on Members' Interests

Review of the existing mechanisms of the Legislative Council for dealing with complaints against Members in their capacity as such

Purpose

This paper sets out the existing mechanisms of the Legislative Council ("LegCo") for dealing with complaints against Members in their capacity as such, the problems with the existing mechanisms and the recommendations on what improvements may be made.

Background

2. In view of the rising public expectation of the conduct and propriety of LegCo Members and to address public concern about LegCo Members investigating complaints made about their fellow legislators, the Committee on Members' Interests ("CMI") has requested the Secretariat to study the relevant experience of overseas legislatures and to make recommendations on how to better meet such public expectation and address such concern.

Existing rules governing Members' conduct in their capacity as such

3. As Members are important public office holders entrusted by the public to deliver important functions which include, among others, enacting law, examining and approving budgets, monitoring the work of the Government, they are obliged to observe high standards of behaviour and financial probity in carrying out their public duties.

4. Members' conduct in their capacity as such is governed by various provisions of the Rules of Procedure ("RoP") outlined in paragraphs 5 to 11 below. The relevant rules do not seek to regulate what Members do in their purely private and personal lives.

Rules 42 and 45 of RoP

5. Rule 42 (Behaviour of Members during meeting) of RoP lays down a standard of behaviour for Members to abide by during Council and committee meetings. Rule 45 (Order in Council and Committee) of RoP further provides that Members will be directed to discontinue their speech if they persist in irrelevance or tedious repetition of their own or other Members' arguments, and will be ordered to withdraw immediately from the meeting if their conduct is grossly disorderly.

Rule 82 of RoP

6. To guard against lobbying for reward or consideration, Rule 82 prohibits Members from advancing the interests for or on behalf of a party at the Council or any committee of the Council in their professional capacity for a fee or reward. This Rule is similar to a resolution passed by the House of Commons of the Parliament of the United Kingdom ("UK") on 6 November 1995 which provides that no Member shall act as paid advocate in any proceeding of the House.

Rule 83A of RoP

7. Under Rule 83A, Members shall not move any motion or amendment relating to a matter in which they have pecuniary interests, whether direct or indirect, or speak on any such matter, except where they disclose the nature of those interests. It is the responsibility of Members to judge whether or not to disclose their pecuniary interests in a matter being considered to enable other people to judge if their views on the matter have been influenced by their interests. A Member should disclose such interest when it is most relevant to do so, normally at the beginning of his or her speech on the matter¹. Rule 83A largely follows a resolution passed by the UK House of Commons on 22 May 1974 concerning declaration of Members' financial interests².

¹ Paragraph 3 of the circular issued by the Clerk to Finance Committee on "Procedural Implications of Pecuniary Interests on Speaking and Voting on a Matter before the [Finance] Committee" on 17 December 2009 (LC Paper No. FC 27/09-10).

² The wording of the resolution of the UK House of Commons of 22 May 1974 is "In any debate of 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."

Rule 83AA of RoP

8. Under Rule 83AA, Members are required to ensure that the information they provided is true and correct when making a claim for reimbursement of operating expenses or applying for advance of operating funds.

Rule 84 of RoP

9. Under Rule 84(1), Members shall not vote upon any question in which they have direct pecuniary interests except where their interests are in common with the rest of the population of Hong Kong or a sector thereof or their votes are given on a matter of Government policy. As the mere presence of a Member may affect the voting result, Rule 84(1A) further provides that a Member shall withdraw when a vote is taken on a question in which he or she has such a direct pecuniary interest. These two subrules are similar to the practices of the UK House of Commons. Under the resolution of 13 July 1992, the House of Commons endorsed certain paragraphs of the First Report of the Select Committee on Members' Interests relating to the financial interests of Chairmen and members of Select Committees. One of the main provisions stipulates that "when a member of a committee, particularly the chairman, has a financial interest which is directly affected by a particular inquiry or when he or she considers that a personal interest may reflect upon the work of the committee or its subsequent report, the member should stand aside from the committee proceedings relating to it".

Rule 85 of RoP

10. Under Rule 85 of RoP, any Member who fails to comply with Rule 83 (registration of interests), 83A (personal pecuniary interest to be disclosed), 83AA (claims for reimbursement of operating expenses or applications for advance of operating funds) 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.

Rule 81 of RoP

11. Under Rule 81(1)³, Members are prohibited from disclosing the evidence taken before, or documents presented to any committee referred to under Rule 80 of RoP, before the committee has presented its report to the Council. Under Rule 81(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. Rule 81(1) was modelled on a resolution of the UK House of Commons in 1837, a breach of which may amount to a contempt of the Parliament and may entail punishments ranging from reprimand or admonition, suspension with or without salary withheld, to expulsion.

Existing mechanisms for handling complaints against Members

12. A number of committees of the Council are tasked or can be appointed to deal with complaints against Members' misconduct, details of which are set out in the ensuing paragraphs.

Committee on Members' Interests

13. CMI, established since 1991, is empowered under Rule 73 of RoP to consider and investigate complaints against Members relating to the registration of Members' interests (Rule 83) and disclosure of pecuniary interests (Rule 83A). The membership size of CMI is set at seven, comprising a chairman, a deputy chairman and five members representing different political groups or interests in the Council. Since 2006, CMI has taken up the additional responsibility of considering and investigating complaints made about Members concerning their claims for operating expenses reimbursement ("OER") and applications for advance of operating funds (Rule 83AA). As a standing committee of the Council, CMI may order any person to appear before the committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

³ Rule 81(1) has the following limitations:

- (a) it is applicable only to standing committees and any other committees which have obtained authorization from the Council to summon witnesses to give evidence;
- (b) it only covers the evidence taken from, and documents presented by, witnesses in compliance with the committee's exercise of its powers and functions outside of a meeting of the committee held in public; and
- (c) it only covers the evidence taken from witnesses summoned by the committee concerned and documents presented by such witnesses.

14. To ensure procedural fairness to the Member under complaint and the complainant as well as to guard against abuse or favourism by a dominant party when CMI deals with complaints received, a detailed procedure for handling complaints has been put in place by CMI since 1999⁴. The procedure is issued to all Members and uploaded onto the website of LegCo. According to CMI's procedure for handling complaints, if a CMI member is a Member under complaint, he or she will not participate in the handling of the complaint or in the meetings of CMI to deliberate on or inquire into the complaint.

15. Under Rule 73(1)(e) of RoP, in reporting to the Council, CMI may make recommendations, including a recommendation as to a sanction under Rule 85 of RoP. Rule 85 provides that any Member who fails to comply with the requirements on registration of interests, disclosure of interests, claims for OER and/or applications for advance of operating fund may be admonished, reprimanded or suspended by the Council on a motion to that effect.

16. While CMI does not have the power to determine whether the conduct of a Member in a particular case is appropriate or ethical, it may 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 (Rule 73(1)(d)). A copy of the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members in their capacity as such" (June 2009 edition) is in **Appendix I**.

Investigation committee

17. An investigation committee ("IC") may be established under Rule 49B(2A) (Disqualification of Member from Office) of RoP following the moving of a motion to censure a Member under Article 79(7) of the Basic Law ("BL79(7)") ("the censure motion") for misbehaviour or breach of oath. Where such a censure motion has been moved under Rule 49B(1A) of RoP, the debate on the motion will stand adjourned and the matter stated in the motion will then be referred to an IC with its members to be appointed by the President of LegCo. Any Member who disagrees with the referral may move, without notice, a motion for the

⁴ "The Procedure of the Committee on Members' Interests for Handling Complaints Received in relation to the Registration or Declaration of Members' Interests" was first drawn up by the Committee on Members' Interests ("CMI") and circulated to Members on 2 August 1999 ("The Procedure"). The Procedure was revised by CMI in 2006 having regard to CMI's new function of handling and investigating complaints concerning Members' claims for reimbursement of operating expenses or applications for advance of operating funds. The Procedure was renamed as "The Procedure of the Committee on Members' Interests for Handling Complaints Received in relation to the Registration or Declaration of Members' Interest or Members' Claims for Reimbursement of Operating Expenses". The Procedure was reviewed and adopted by CMI at the beginning of each legislative term.

Council to order otherwise. If that motion of not referring the matter to an IC is passed, the censure motion will not be proceeded with.

18. An IC, once established, is responsible for establishing the facts stated in the censure motion and giving its views on whether or not the facts as established constitute grounds for the censure (Rule 73A(2)). The facts so established and the views given on those facts are to be reported to the Council for reference by all Members when debating the censure motion. In accordance with Rule 40(6A) of RoP, that debate will take place at the Council meeting at which normal business is to be transacted after the tabling of the IC's report. Under BL79(7), the President of LegCo shall declare that a Member being censured is no longer qualified for the office when the censure motion is passed by a vote of two-thirds of the Members present.

19. The membership size of IC is set at seven, comprising a chairman, a deputy chairman and five members. The Committee on Rules of Procedure of the first LegCo considered that such size, which should be subject to periodic review, would allow for a fair representation of the different political groups or interests in the Council. According to Rule 73A(13), IC shall determine its own practice and procedure.

Select committee

20. Under Rule 78(1) of RoP, the Council may appoint one or more select committees to consider matters or bills which the Council may refer to the committee. A select committee ("SC") therefore may be appointed by the Council to consider and investigate complaints about Members' conduct. However, in practice no SC has ever been appointed to consider and investigate complaints about Members' conduct.

21. Under the existing practice, before an SC can be appointed, the proposal to set up the SC should first obtain the endorsement of the House Committee. If the proposal is agreed to, a subcommittee will be set up to undertake the necessary preparatory work, including the drawing up of the wording of the proposed motion to set out the terms of reference of the SC and to seek authorization of the Council for the SC to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance as well as making recommendations on the membership size of the SC. Should the House Committee endorse the subcommittee's recommendations, the chairman of the subcommittee will move the motion at a Council meeting. If the motion is passed by the Council, the Chairman of the House Committee will make a recommendation to the President on the membership, the chairmanship and the deputy

chairmanship of the SC. Hitherto, no SC has ever been appointed by the Council to consider and investigate complaints made against Members.

Problems with the existing mechanisms

22. Having studied the existing arrangements, the Secretariat has identified a number of problems which are set out in the ensuing paragraphs.

Committee on Members' Interests

23. Under the existing arrangements, there is an absence of an appropriate and formal mechanism in LegCo underpinned by rule(s) in the RoP to deal with complaints made against Members' conduct in their capacity as such, except for matters concerning registration and disclosure of interests and claims for OER and applications for advance of operating funds which are under the remit of CMI.

24. It should be noted that attempts had been made in the past to expand the terms of reference of CMI to carry out formal investigation of complaints relating to Members' misconduct. Pursuant to the decision of the House Committee made at its meeting on 30 May 1994, CMI discussed Hon Emily LAU's proposal of setting up a committee to monitor the conduct of Members. Having studied the practices of legislatures in selected Commonwealth countries and making reference to the codes of conduct of some local professional bodies, CMI concluded that some general and specific standards of conduct should be drawn up. To this end, CMI drew up in February 1995 a set of draft "Guidelines on the Standards of Conduct for Members of the Legislative Council" ("the draft Guidelines"). A report was then made to the House Committee and a one-month public consultation exercise on the draft Guidelines was conducted from 24 February to 23 March 1995 inviting both members of the public and Members to give their views. No submission was received from the public, and a Member submitted a submission expressing his opposition to the proposal.

25. CMI submitted a further report to the House Committee for consideration on 16 June 1995 recommending that the draft Guidelines should be adopted; and CMI should be empowered to carry out investigation into complaints about misconduct of Members. As the House Committee failed to arrive at a decision on CMI's recommendations, CMI decided that the Chairman of CMI should move a motion on behalf of the Committee to amend the Standing Orders to empower CMI to consider

and investigate complaints about Members' misconduct. At the Council meeting of 19 July 1995, the motion was negated by a vote of 28 to 20.

26. After the start of the 1995-1997 LegCo term, CMI decided to conduct another round of public consultation on the measures to monitor the conduct of Members. During the one-month consultation period, no submission was received from the public and one submission was received from a Member affirming the opposition of Members belonging to the Democratic Party to the introduction of any formal measures to monitor the conduct of Members.

27. At the meeting of CMI held on 6 February 1996, the majority of members present did not support the proposal to introduce a formal mechanism for monitoring Members' conduct, but they favoured the issuance of a set of advisory guidelines. However, because of the new composition of LegCo, CMI agreed that the whole issue should be re-submitted to the Council for a full debate in the form of a motion. At the Council meeting of 3 April 1996, the Chairman of CMI moved a motion on behalf of the Committee to empower CMI to carry out investigation into complaints about Members' misconduct. The motion was negated again by a vote of 36 to 11. The reasons advanced for objecting this motion and the earlier motion on the same subject on 19 July 1995 were that it was difficult to define "proper conduct"; the mechanism might be abused; Members' conduct was already under public scrutiny; and if needed, a select committee might be appointed by the Council to consider such complaints about Members' misconduct.

28. At the meeting on 24 May 1996, CMI decided that although the motion to introduce a formal mechanism was negated by the Council, the draft Guidelines should be issued with the new title "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council in their capacity as such" to all Members for reference.

Investigation committee

29. Although IC is tasked with the responsibility to investigate Members' misbehaviour/breach of oath, the investigation can only be carried out pursuant to the moving of a motion to censure a Member under BL79(7), which if passed by a vote of two-thirds of the Members present, would result in disqualification of a Member from office. When the resolution was passed by the Council on 28 April 1999 for putting in place a mechanism in RoP (Rule 49B) for the implementation of BL79(7), it was made clear that the mechanism is for dealing with allegations which are serious enough as to have brought the Council into disrepute and should be

kept separate from those mechanisms for dealing with complaints against a Member which may lead to a lesser form of punishment. It is therefore clear that the above mechanism is not intended to deal with a complaint about a Member's conduct the nature of which does not warrant disqualification from office. Further, since the only sanction provided under the mechanism for implementing BL 79(7) is disqualification from office, invoking this mechanism to deal with less serious misbehaviour may result in the Member concerned not being penalized at all although the complaint against him or her is substantiated.

Select committee

30. Although a SC may be appointed by the Council to consider and investigate complaints about Members' conduct which fall outside the remit of CMI and IC, the fact that this has never been done may suggest that it may not be appropriate for a SC to deal with such complaints, having regard to the following matters: the time-consuming process involved as depicted in paragraph 21 above; unnecessarily exposing the identities of the Members being named in the complaint if the complaint is eventually found to be frivolous or vexatious and no SC is appointed at the end; and the absence of power provided in RoP for SC to recommend sanctions.

31. The ad hoc nature of SC, similar to IC, and the fact that SC will consider any matters referred to it by the Council render SC lacking of a standing practice and procedure for handling complaints to ensure procedural justice to all parties concerned. While SC will generally adopt the practice and procedure of previous SCs so much so that most of the provisions in the practice and procedure have been fairly standard, these practice and procedure are not formulated for considering complaints against Members as in the case of CMI which has laid down a detailed procedure for handling complaints concerning registration and declaration of Members' interests and Members' OER claims or fund-advance applications.

Other aspects

32. Another problem with the existing mechanisms is that investigation conducted by CMI, IC and SC could be perceived by the public as Members conducting investigation into the conduct of their fellow legislators. This might affect the credibility not only of the committees but also that of the Council.

33. Further, at present there is also no mechanism for dealing with premature publication of evidence under Rule 81(1) of RoP. Following incidents of unauthorized disclosure of information relating to the internal deliberations and draft reports of the committees (i.e. the Select Committee to Inquire into the Handling of the Severe Acute Respiratory Syndrome Outbreak by the Government and the Hospital Authority, CMI and the Public Accounts Committee) in October 2004, April 2005 and March 2006 respectively, there have been calls for introducing clearer and more stringent provisions on such unauthorized disclosure in the Council's rules as well as the establishment of a comprehensive mechanism to deal with such matters.

Relevant rules and practices of selected overseas legislatures

34. In considering how the existing system to regulate Members' conduct in their capacity as such should be changed to better meet public expectations, the Secretariat has conducted a study of how the UK House of Commons, the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia, the Legislative Yuan of Taiwan and the National Assembly of the Republic of Korea deal with complaints about the conduct of their Members.

35. All of the overseas legislatures examined have mechanisms in one form or another to handle Members' misconduct. Both the UK and the Canadian Parliaments have a formal code of conduct for Members approved by the House. The code of conduct for Members of the UK Parliament applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives. In Canada, the code of conduct for Members of its Parliament is only concerned with conflict of interests and not with all types of ethical behaviour. In respect of the Australian Parliament, the Legislative Yuan of Taiwan and the South Korean Parliament, the conduct of their Members are governed either by constitution, legislation and/or resolutions of the parliament.

36. Further, the responsibility for looking into cases of misconduct of Members in all of these legislatures all rests with a committee, although in the cases of the UK and Canadian Parliaments the complaints are entrusted to a commissioner who is independent from the parliament. In Australia, the Standing Committee of Privileges and Members' Interests has recently tabled a discussion paper on the "Draft Code of Conduct for Members of Parliament" in the House on 23 November 2011 which includes that if a code of conduct for Members were to be adopted, there is value in the

appointment of an independent Parliamentary Integrity Commissioner whose central role is to receive and investigate complaints under the code of conduct⁵.

37. As regards unauthorized publication of reports and draft reports by Members in the Parliaments of UK, Canada and Australia, it is considered a breach of parliamentary privilege. Hence, such a breach cannot be adjudicated by any other body except by a committee of the House.

38. The types of sanctions which these legislatures may impose on Members for misconduct may be in the form of making an apology to the parliament, reprimand, admonition, suspension and expulsion. An information note setting out the relevant rules and practices of these overseas legislatures is in **Appendix II**.

Recommendations

39. In the light of the above problems with the existing mechanisms and having regard to the mechanisms adopted by overseas jurisdiction for handing complaints relating to Members' conduct, members are invited to consider whether the following initiatives should be taken to improve the existing mechanisms:

- (a) a formal code of conduct for Members for adoption by the Council may be drawn up with principles such as those governing integrity, accountability and honesty and the general and specific rules with which Members are expected to comply to be included in the code. The code may be complemented by a set of detailed guides, as in the case of the UK House of Commons, to better assist Members in complying with the code and to better enable the general public to understand the requirements of the code for Members;
- (b) the terms of reference of CMI may be expanded to cover complaints about Members' conduct, including unauthorized disclosure of information. As there is no definition of or reference to "misconduct" of Members in the RoP, CMI should consider each case according to the seriousness

⁵ Paragraph 5.31 of the Discussion Paper on the "Draft Code of Conduct for Members of Parliament" published by the Standing Committee of Privileges and Members' Interests of the House of Representatives of the Parliament of Australia.

involved in the breach of code of conduct (if made) and the relevant rules;

- (c) a person of independent standing may be appointed as commissioner to investigate and report on complaints about Members' conduct to address public concern about Members conducting investigation against their fellow legislators. If this proposal is accepted, members may consider whether the commissioner should also be responsible for maintaining the Register of Members' Interests, giving advice on the interpretation of the code of conduct and providing confidential advice to individual Members on matters of interests and conduct. A paper comparing the appointment, roles and functions, powers, etc. of the commissioners in the UK and Canadian Parliaments is in **Appendix III** for members' reference;
- (d) if a commissioner referred to in (c) is appointed, members may consider whether the making of the decision on whether or not to recommend sanctions should continue to be vested in CMI while the commissioner's report is to be attached to the CMI's report to the Council; and
- (e) the oversight of the work of the commissioner as well as the oversight of the code of conduct for Members should rest with CMI.

Advice sought

40. Members are invited to consider the recommendations set out in paragraph 39 above.

Council Business Division 3
Legislative Council Secretariat
3 January 2012

**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)*

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
2. 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.
3. 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.
4. A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
5. 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.
6. 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 ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

Information note on the rules and practices of selected overseas legislatures on Members' interests and conduct

Purpose

This note provides information on how the House of Commons of the Parliament of the United Kingdom (“UK”), the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia, the Legislative Yuan of Taiwan and the National Assembly of the Republic of Korea deal with complaints about the conduct of their Members.

Relevant rules and practices in overseas legislatures

United Kingdom

2. Members of the House of Commons of the UK Parliament are bound by a Code of Conduct and there is a Guide to the Rules relating to the Conduct of Members ("the Guide") to assist Members in discharging their duties placed upon them by the Code of Conduct. The Code of Conduct and the Guide, which were approved by the House in 1995 and have been revised from time to time, provide a framework within which acceptable conduct should be judged. Arising from the recommendations of a Select Committee on Standards in Public Life set up in 1995, the House of Commons has established a mechanism for handling complaints relating to the conduct of Members. This mechanism is set out in paragraphs 3 to 8 below.

Parliamentary Commissioner for Standards and Committee on Standards and Privileges

3. A Parliamentary Commissioner for Standards is appointed by the House of Commons to maintain the Register of Members' Financial Interests ("the Register"), give advice on a confidential basis to individual Members and to the Committee on Standards and Privileges about the interpretation of the Code of Conduct and the Guide, receive and investigate complaints about Members who are alleged to have been in

breach of the Code of Conduct and the Guide, and report his findings to the Committee. The Commissioner is an independent officer of the House of Commons and can be removed from office only by a substantive resolution of the House.

4. A new Committee on Standards and Privileges ("the Committee"), which replaced the former Committees on Privileges and on Members' Interests, is appointed by the House of Commons to (i) oversee the work of the Commissioner, (ii) examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register and any other registers of interest established by the House of Commons, (iii) review from time to time the form and content of those registers, (iv) consider any specific complaints made in relation to registration or declaration of interest referred to it by the Commissioner, (v) consider any matter relating to the conduct of Members (including specific complaints in relation to alleged breaches of the Code of Conduct which have been drawn to the Committee's attention by the Commissioner), and (vi) recommend any modifications to the Code of Conduct as may from time to time appear to be necessary. The Committee, which has 10 members and is always chaired by a Member of the opposition, can appoint subcommittees to assist its work.

5. The Code of Conduct establishes briefly the public duties of Members and includes principles and rules. It iterates the general principles of conduct established by the Committee on Standards in Public Life¹; and gives some eight high-level rules of conduct, including the obligation to register and declare interests². Much fuller rules and guidance supporting the Code of Conduct are provided in the Guide and in the more detailed rules of the House.

6. From 2 December 2010, the Commissioner has been empowered, upon having sufficient evidence, to initiate an investigation into whether a Member may have breached the Code of Conduct without receiving a complaint.

7. To assist the Commissioner in establishing the facts of a complaint, he may, and if requested by the Committee must, set up an Investigatory Panel. The Panel consists of the Commissioner, as the

¹ The Committee on Standards in Public Life is an independent public body which advises government on ethical standards across the whole of public life in the United Kingdom.

² Consultation Paper on the Review of the Code of Conduct, Parliamentary Commissioner for Standards, House of Commons of the Parliament of the United Kingdom, published on 7 March 2011, p.13.

Chairman, and two assessors, one of them legally qualified (appointed by the Commissioner) and the other a Member (not a member of the Committee) appointed by the Speaker.

8. The Commissioner reports the findings of his investigations to the Committee, which in turn reports to the House, including any recommendations on penalties ranging from public apology, suspension of service to expulsion from the House, to the House for a decision. The report includes the Commissioner's memorandum and supporting evidence and any additional evidence obtained by the Committee.

Independent Parliamentary Standards Authority and Compliance Officer

9. Following allegations that some Members had used the allowance system for their own benefits in 2009, measures have been introduced with a view to restoring public confidence in Members. One of the measures is the establishment of the Independent Parliamentary Standards Authority ("IPSA") under the Parliamentary Standards Act 2009. The IPSA is a statutory body, independent from Parliament, Government and political parties in order to establish and administer an expenses scheme for Members.

10. The Constitutional Reform and Governance Act 2010 created the role of the Compliance Officer. The Compliance Officer reports to the Board of IPSA and acts wholly independently of IPSA's executive branch. The Compliance Officer has responsibility to review and investigate expenses incurred by a Member of Parliament if the following circumstances arise: (i) a member of the public makes a complaint to the Compliance Officer about an alleged misuse of expenses; (ii) a complaint is referred to the Compliance Officer from within IPSA about the possible misuse of expenses; (iii) a Member of Parliament refers a determination of a claim by IPSA to the Compliance Officer; or (iv) the Compliance Officer has reason to believe that an allowance has been overpaid.

Working relationship between IPSA, the Compliance Officer and the Commissioner

11. Where either IPSA or the Compliance Officer considers that a Member's conduct justifies it, they shall refer that Member, with the relevant evidence, to the Commissioner for him to decide whether to inquire into a potential breach of the Code of Conduct or related rules. The Compliance Officer shall inform the Commissioner when he initiates a substantive investigation in respect of that Member. Where the

Compliance Officer receives a complaint that, in his judgment, is a matter for the Commissioner, the Compliance Officer shall pass the complaint to the Commissioner.

Canada

12. The conduct of Members of the House of Commons of the Parliament of Canada is set out in the Parliament of Canada Act. Following the enactment of the Federal Accountability Act on 9 July 2007, the office of the Conflict of Interest and Ethics Commissioner ("CIEC") was created to administer the Conflict of Interest Act ("the Act") for public office holders and the Conflict of Interest Code for Members of the House of Commons ("the Code"). These two regimes seek to prevent conflicts between the public duties of elected and appointed officials and private interests. In respect of the Code, it is an appendix to the Standing Orders of the House. The Code prohibits Members from acting in any way, when performing their parliamentary duties or functions, to further their private interests or those of their families, or to improperly further the private interests of another person or entity. The Code includes rules on avoiding conflict of interest, processes for the confidential disclosure of private interests to CIEC, procedures for making Members' summary information public, and a process for investigating alleged contraventions of rules by Members. The Code also provides for the Commissioner to have an advisory role. The Code has been in effect since 2004 and was most recently amended in June 2007.

13. CIEC is appointed by the Governor in Council after consultation with the leader of every recognized party in the House of Commons for a renewable seven-year term. He or she may only be removed for cause by the Governor in Council on address of the House of Commons. Under the Act, CIEC must be a former judge of a superior court in Canada or of a provincial court; or a former member of a federal or provincial board, commission or tribunal who has demonstrated expertise in at least one of the follow area: conflict of interest, financial arrangements, professional regulation and discipline or ethics; or a former Senate Ethics Officer or former Ethics Commissioner.

14. CIEC is required to present two separate annual reports to the House on his or her office's activities by 30 June each year. One annual report relates to the administration of the Act, and the other to the administration of the Code. Pursuant to the Standing Orders of the House, the Standing Committee on Procedure and House Affairs has the mandate

to review and report on all matters relating to the Code and the annual report of CIEC with respect to his or her responsibilities for issues relating to Members' conduct governed by the Code.

15. As far as monitoring the conduct of Members is concerned, CIEC has the discretion provided under the Code to initiate an inquiry provided that he or she has reasonable grounds to believe that a contravention took place. The House can also by resolution direct CIEC to conduct an inquiry. Complaints made by members of the public are treated by CIEC as information when he or she considers whether to initiate an examination or inquiry. If CIEC determines that a request for an enquiry under the Code was frivolous, vexatious or not made in good faith, CIEC may decline to investigate but must still issue a report. In such circumstances, he or she must state the reasons when dismissing the request for inquiry, and may recommend that action be considered against the Member who made the request.

16. CIEC issues a report at the conclusion of an inquiry, which is provided to the Speaker for tabling, and is also made public. If the Member in question was found to have failed in complying with the Code, CIEC may recommend appropriate sanctions. CIEC may also make recommendations concerning interpretations and revisions of the Code. After tabling of the report in the House, the Member under complaint has a right to make a statement regarding the report to the House. A motion to concur the report may be moved and debated. If no motion is moved and disposed of prior to the 30th sitting day after the day on which the report is presented, the motion to concur will be deemed moved and the Speaker will put the question to dispose of the motion to the House. The House can refer the report back to CIEC for further consideration, with or without instruction.

17. Since the Code came into force in 2004, no sanctions have been imposed on Members found to have contravened it.

Australia

18. Under the resolution of the House of Representatives adopted on 13 February 1986, any Member shall be guilty of a serious contempt of the House and shall be dealt with by the House accordingly if he or she:

- (a) knowingly fails to provide a statement of registrable interests to the Registrar of Members' Interests by the due date;

- (b) knowingly fails to notify any alteration of those interests to the Registrar of Members' Interests within 28 days of the change occurring; or
- (c) knowingly provides false or misleading information to the Registrar of Members' Interests.

19. The Standing Committee of Privileges and Members' Interests ("the Standing Committee") is appointed by the House to, among others, inquire into and report on complaints of breach of privilege or contempt which may be referred to it by the House Standing Order 51, by the Speaker under Standing Order 52, or any other related matter referred to it by or in accordance with a resolution of the House. The Standing Committee consists of 11 Members: the Leader of House or his or her nominee, the Deputy Leader of the Opposition or his or her nominee and nine other Members (five government and four non-government Members).

20. Members whom the House determines have committed contempt may be punished by reprimand or suspension from the service of the House for a period of time. In some cases, an apology by the Member concerned may forestall further action.

21. Following repeated debates over the years and several recent incidents which resulted in calls for establishing a code of conduct, the House passed a resolution on 23 November 2010 to refer the following matters for follow up by the Standing Committee:

- (a) develop a draft Code of Conduct for Members of Parliament; and
- (b) report back to the House by the end of the Spring 2011 sittings, 30 November 2011;
- (c) in considering the matters in paragraphs (a) and (b) above, to give consideration to:
 - (i) the operation of codes of conduct in other parliaments;
 - (ii) who could make a complaint in relation to breaches of a code and how those complaints might be considered;
 - (iii) the role of the proposed Parliamentary Integrity Commissioner in upholding a code; and

- (iv) how a code might be enforced and what sanctions could be available to the Parliament; and
- (d) consult with the equivalent committee in the Senate on the text of a Code of Conduct with the aim of developing a uniform code, together with uniform processes for its implementation for Members and Senators.

Taiwan

22. Conduct of Members of the Legislative Yuan is governed by three pieces of legislation:

- (a) *Legislators Demeanor Law*: specifically, Chapters 4 and 5 of the Law provide rules on issues such as lobbying, political donations and recusal when a conflict of interests arises. The Law also empowers the Discipline Committee of the Legislative Yuan to receive complaints and conduct investigation;
- (b) *Recusal of Public Servants due to Conflict of Interests Act*: specifically, sections 7 to 10 of the Act deal with the use of official power to seek personal financial gain and prohibit Members from participating in debates and voting on matters of which they have personal interests. Sections 14 to 20 further empower the Control Yuan to impose sanctions for non-compliance of the Act by imposing a fine ranging from NT\$1 million to NT\$7.5 million. The Control Yuan, which is one of the five branches of the government, is an investigatory agency that monitors the other branches of government; and
- (c) *Property Declaration by Public Servants Act*: the Act stipulates the requirements for public servants, including the President, members of his cabinet and Members of the Legislative Yuan, to declare their properties and those of their spouses and children. The Act also empowers the Control Yuan to impose sanctions for non-compliance of the Act by imposing a fine ranging from NT\$20,000 to NT\$4 million.

23. The Discipline Committee is one of the four special committees of the Legislative Yuan set up to handle the internal affairs of the Legislative Yuan. It consists of eight Members who take turn to chair the

meetings. It meets on a monthly basis, and convenes special meetings where necessary.

24. Cases of alleged misconduct may be submitted to the Discipline Committee by the President of the Legislative Yuan or by resolution of the Legislative Yuan handed over by a committee chairman. After considering the cases, the Discipline Committee will report to the Legislative Yuan the disciplinary actions it has decided based on the severity of the offences. These disciplinary actions are in the order of a verbal apology, written apology, suspension for four to eight sittings, and suspension of service for three to six months if passed by more than two-thirds of Members. Members who are suspended are not allowed to be in the Chamber and participate in committee meetings. They will also not receive salary during the suspension period.

South Korea

25. The regulatory regime concerning conduct of Members of the National Assembly of the Republic of Korea is mainly composed of the following:

- (a) *Constitution of the Republic of Korea*: Article 46 of the Constitution clearly spells out the duties of Members in that they have to maintain high standards of integrity, give preference to national interests, perform their duties with conscience and not use their positions to seek personal financial gains or help others to achieve the same;
- (b) *National Assembly Act*: specifically, Article 29 of the Act prohibits Members from holding concurrent offices in certain public organizations to avoid conflict of interests with their parliamentary role. Article 40-2 further prohibits Members from engaging in any act which would generate profits arising from or in relation to a committee of which they are members; and
- (c) *Public Service Ethics Act*: specifically, Chapter IV of the Act stipulates rules on post-service work of public officers, including a two-year restriction for Members to take up employment with a profit-making organization closely connected with their service in the National Assembly. Articles 4 to 6 of the Act provide the requirements on

registration and declaration of interests by Members. Article 14-4 of the Act further requires Members to either sell their stocks or set up a blind trust to manage their stocks, if the value of these stocks exceeds a prescribed amount.

26. The 15-member Special Committee on Ethics of the National Assembly is appointed under Article 46 of the Constitution of the Republic of Korea to examine matters concerning the qualification and discipline of assemblymen. The Special Committee on Ethics is advised by an Ethics Investigation Advisory Committee whose membership is drawn from the fields of law, academia and media etc.

27. The Special Committee on Ethics is tasked with enforcing the relevant provisions of the National Assembly Act and the Public Service Ethics Act. It will embark on an examination on referral through a resolution of the National Assembly or by the Speaker. At the conclusion, it will submit a report to the National Assembly for adoption by voting.

28. Article 163 of the National Assembly Act sets out the types of disciplinary actions that the National Assembly can impose on the Members found in breach of the relevant acts, including give a warning to the Member concerned at an open meeting, require the Member concerned to apologize for the breach at an open meeting, suspension of service for a period not exceeding 30 days with the amount of Members' allowances reduced in half during the suspension and expulsion from the National Assembly. Although Article 22 of the Public Service Ethics Act states that the power to adjudicate non-compliance of the Act rest with the Special Committee on Ethics, the Act also prescribes other penalties, including fines and imprisonment, which will be carried out by law enforcement agencies and the courts. These include the offences such as refusal to register property, refusal to set up a blind trust of stocks, submission of false information and violation of the post-service restriction. The maximum penalties are imprisonment of one year and a fine of 20 million won.

**Comparison between the Parliamentary Commissioner for Standards
in the United Kingdom and the Conflict of Interest and Ethics
Commissioner in Canada**

	Parliamentary Commissioner for Standards in UK	Conflict of Interest and Ethics Commissioner in Canada
The office		
Appointment	<p>Independent officer of the House of Commons</p> <p>Appointed by the House on the recommendation of the House of Commons Commission and through open competition</p>	<p>Independent officer of the Parliament</p> <p>Appointed by the Governor in Council, after consultation with the leader of every recognized party in the House of Commons and after approval of the appointment by resolution of the House</p>
Eligibility	<p>No special requirements</p> <p>The current and previous commissioners are either former senior civil servants or have public service backgrounds</p>	<p>Must be:</p> <ul style="list-style-type: none"> - a former judge of a superior or provincial court; or - a former member of a federal, or provincial board, commission or tribunal who has demonstrated expertise in at least one of the following areas: conflict of interest, financial arrangements, professional regulation and discipline or ethics; or - a former Senate Ethics Officer or former Ethics Commissioner

	Parliamentary Commissioner for Standards in UK	Conflict of Interest and Ethics Commissioner in Canada
The office		
Roles and functions	<ul style="list-style-type: none"> - Maintains the register of Members' financial interests and other registers of interests; - Advises Members and the Committee on Standards and Privileges on interests and standard issues; and - Investigates complaints about Members' conduct 	<ul style="list-style-type: none"> - Provides advice to public office holders and Members on compliance with the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons ("the Code") respectively; - Reviews their confidential reports on matters such as assets, liabilities and activities; - Investigates possible contraventions; and - Reports to the Parliament
Length of appointment	Five-year non-renewable term	Seven-year renewable term
Removal from office	By a substantive resolution of the House	By the Governor in Council following a resolution of the House
Oversight of the office	Committee on Standards and Privileges	House of Commons
Oversight of the Code of Conduct / Conflict of Interest	Committee on Standards and Privileges	Standing Committee on Procedure and House Affairs
Mode of operation	Part-time (four days a week)	Full-time
Number of staff of the office	Full-time equivalent staff of 7.5	46 full-time staff
Annual budget	£606,700 for 2010-2011 (about HK\$7,645,000)	Remains at about CAN\$7.1 million since 2008 (about HK\$53,600,000)

	Parliamentary Commissioner for Standards in UK	Conflict of Interest and Ethics Commissioner in Canada
Investigation		
Initiation of investigation	Act on complaint received, and may initiate investigation upon having sufficient evidence	Can start an inquiry when a Member files a complaint against another Member for alleged non-compliance of the Code. Under the Code, has the discretion to initiate an inquiry against a Member provided there are reasonable grounds to believe that a contravention took place.
Handling of anonymous complaints	No	No
Investigation process	Consists of three stages: initial consideration, preliminary inquiry and full investigation	Consists of four stages: initial consideration, preliminary inquiry, full investigation and reporting to the House
Power to compel evidence	No	No
Rectification mechanism	Has discretion to rectify the matter without having to report fully to the Committee on Standards and Privileges, if the Member under complaint already admits to failing to register or declare an interest or where the interest involved is minor or the failure to register or declare was inadvertent	No
Recommendation of sanctions	No	Yes

	Parliamentary Commissioner for Standards in UK	Conflict of Interest and Ethics Commissioner in Canada
Investigation		
Reporting	<p>At the conclusion of an investigation, a memorandum will be submitted to the Committee on Standards and Privileges which would then decide whether or not to recommend a sanction against the Member under complaint.</p> <p>Moreover, even if a decision has been made not to uphold the complaint, a memorandum may be submitted to the Committee on Standards and Privileges because of the public interest in the complaint or because it raised wider issues.</p> <p>The Committee's report together with the memorandum will be submitted to the House for a decision.</p>	<p>At the conclusion of an inquiry, a report recommending a sanction, if any, will be provided to the Speaker for tabling in the House and made public. After tabling the report in the House, the Member under complaint has a right to make a statement regarding the report to the House. A motion to concur the report may be moved and debated. If no motion is moved and disposed of prior to the 30th sitting day after the day on which the report is presented, the motion to concur will be deemed moved and the Speaker will put the question to dispose of the motion to the House. The House can refer the report back to the Commissioner for further consideration, with or without instruction.</p>

Council Business Division 3
Legislative Council Secretariat
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