

立法會 *Legislative Council*

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Committee on Members' Interests

Background brief prepared by the Legislative Council Secretariat for the second meeting on 2 January 2009

Advisory guidelines on matters of ethics in relation to the conduct of Members

Purpose

This paper sets out the deliberations of the Committee on Members' Interests¹ ("CMI") of the previous and current terms of the Legislative Council ("LegCo") on issues relating to the drawing up of a set of advisory guidelines on matters of ethics in relation to the conduct of Members in their capacity as such.

CMI of the former LegCo

2. In 1990, the former LegCo formed an ad-hoc group to conduct an overall review of the Standing Orders of the Legislative Council of Hong Kong ("SO") to reflect current practices and account for the changing circumstances. At the Council meeting on 10 July 1991, a resolution was passed to make a number of changes to SO, which took effect on 12 September 1991 after the commencement of a new term of LegCo. Among these changes was the addition of new SO 60B to provide for the establishment of a standing committee called "Committee on Members' Interests".

3. Under SO 60B(1)(d), one of the functions of CMI was "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"².

¹ At its meeting held on 6 February 1996, the Committee on Members' Interests agreed to change its Chinese name from "議員利益委員會" to "議員個人利益監察委員會", as recommended by a working group chaired by the then President of the Legislative Council.

² The Chinese version of SO was first available on 10 July 1996, on which day a resolution was passed by the former LegCo, to amend SO by adding thereto the Chinese text of SO.

4. In 1992, the case of a Member appearing in a newspaper advertisement to promote a television programme prompted CMI to deliberate one of its functions to consider matters of ethics in relation to Members' conduct. CMI noted that as far as matters of ethics were concerned, the function of CMI was advisory in nature, as opposed to its function under SO 60(1)(c), which empowered CMI to investigate complaints made in relation to the registration and declaration of interests. CMI decided that further consideration on this subject be deferred until after the more urgent tasks, such as drawing up guidelines on the registration of interests and procedures of CMI, were completed.

Proposal to empower CMI to monitor Members' conduct

5. At its meeting held on 30 May 1994, the House Committee invited CMI to deliberate on Hon Emily LAU's proposal that a committee be set up to monitor the conduct of Members. CMI then held a series of meetings to consider the issue, with particular emphasis on the extent to which the conduct of Members should be monitored. In the course of its work, CMI studied the practice adopted by other legislatures of a number of Commonwealth countries as well as the United States in monitoring the conduct of Members of Parliaments (see paragraphs 12 to 20 below). Reference was also made to the codes of conduct of some local professional bodies, such as the Medical Council of Hong Kong, Hong Kong Society of Accountants and the Law Society of Hong Kong. CMI concluded that some general and specific standards of conduct should be drawn up. After several months' of deliberations, CMI drew up in February 1995 a set of draft "Guidelines on the Standards of Conduct for Members of the Legislative Council" ("draft Guidelines").

6. A report was then made to the House Committee and a 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.

7. CMI submitted a further report to the House Committee for consideration at its meeting on 16 June 1995. Two major recommendations in the report were that:

- (a) the draft Guidelines drawn up by CMI should be adopted; and
- (b) CMI should be empowered to carry out investigation into complaints about misconduct of Members.

8. As the House Committee failed to arrive at a decision on CMI's recommendations, CMI decided that a motion should be moved, under the name

of its Chairman, to amend the SO to empower CMI to consider and investigate complaints about Members' misconduct. At the Council meeting held on 19 July 1995, the motion was defeated by a vote of 28 to 20.

9. After the start of the 1995-1997 LegCo term, CMI reviewed the matter and decided to conduct another round of public consultation on the proposal to introduce measures to monitor the conduct of Members. During the one-month consultation period, Members of the Democratic Party made a submission, which re-affirmed its opposition to the introduction of any formal measures to monitor the conduct of Members. No submission was received from the public.

10. 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 to monitor 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, as in the previous session, to the Council for a full debate in the form of a motion. At the Council meeting held on 3 April 1996, the Chairman of CMI moved a motion which had the same terms as the one moved on 19 July 1995. The motion was negatived again by a vote of 36 to 11.

11. At its meeting on 24 May 1996, CMI decided that although the motion to introduce a formal mechanism had not been passed by the Council, the draft Guidelines should be issued, under SO 60B(1)(d) 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" ("Advisory Guidelines"), to all Members for their reference. The word "advisory" was added to the title of the guidelines to make it clear that the guidelines were intended for Members' reference only. The set of Advisory Guidelines adopted by CMI and issued to all Members in June 1996 is in **Appendix I**.

Deliberations of CMI on the guidelines

12. CMI noted that standards of conduct in most of the overseas legislatures selected for reference consisted of both general and specific standards, and in the case of United Kingdom, there was no formal code of conduct for Members of Parliament apart from the rules governing registration or declaration of interests. Deliberations of CMI on the individual paragraphs are set out in the ensuing paragraphs.

Paragraph 1: A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council.

13. Paragraph 1 was adapted from a similar provision adopted by the Parliament of Victoria, Australia, which read: "Members shall ensure that their conduct as Members must not be such as to bring discredit upon the Parliament."

Footnote to Paragraph 1: 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. For example, the appearance of a Member in an advertisement to promote a commercial product or service may be regarded as not in keeping with the position and prestige of a Member of the Council. Members are therefore advised to exercise caution when deciding to engage in advertisement activities of a commercial nature as such engagement may run the risk of bringing discredit upon the Council.

14. CMI considered that Members should be advised to consider carefully before engaging in advertisements to promote a commercial product or service as it might bring discredit to the Council. In arriving at this view, CMI had taken into account the following:

- (a) the advice of the legal adviser to CMI that freedom of expression enshrined in Article 16 of the Hong Kong Bill of Rights Ordinance (Cap. 383) was not absolute, and restrictions could be imposed on a need basis. In the case of LegCo, the need to preserve the integrity of the Council might be justified as a necessary means of restriction. CMI and the Council would eventually have to decide on the scope of restriction, its enforceability and whether there were other means to achieve the same objective; and
- (b) the view generally held by members that Members should not help in promoting commercial activities.

Paragraph 2: A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or the President for the regulation of the practice and procedure of the Council and its committees or Members' behaviour in their conduct of the business of the Council.

15. Paragraph 2 was adapted from clause 2 of Rule 43 (currently Rule 23) of the Rules of the House of Representatives of the United States, which read: "A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof". According to the House Ethics Manual published by the Committee on Standards of Official Conduct, the provision had been interpreted to mean that Members, officers, and employees might not do indirectly what they would be barred from doing directly, and the House rules should be read broadly.

Paragraphs 3 and 4

16. These paragraphs were just restating SO 65 and 64A, which were provisions on the declaration of pecuniary interest and registration of registrable interests, and were also the predecessors of Rules 83A, 84 and 83 of the existing Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region ("RoP").

Paragraph 5: A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.

17. Paragraph 5 was adapted from a provision of the Member's Standards of Office Act 1986 (Ontario), Canada, which read: "A Member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest." CMI recognized that it was possible for a Member by virtue of his position to exert undue pressure on another person to further his private interest.

Paragraph 6(a): A Member should not knowingly 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.

18. In drafting Paragraph 6(a), CMI had made reference to a provision of the Canadian Code for Ministers & Public Office Holders, which read: "public office holders shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public".

Paragraph 6(b): Member should ask for information only about matters of public interest and should not seek information for private or personal interest.

19. In this connection, CMI had made reference to the provisions of the Draft Code for India's Members of Parliament, which read:

- "(i) Members should ask for information only about matters of public or national interest.
- (ii) Information should not be gathered for private interest."

Paragraph 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.

20. Paragraph 7 was adapted from the then Guidelines on Claims for General Expenses Allowance issued by the LegCo Secretariat.

CMI of the First LegCo (1998-2000)

21. RoP was made by the First LegCo by passage of a resolution in Council on 2 July 1998. According to RoP 73(1)(d), which had the same wording as SO 60B(1)(d), CMI had the same function in respect of matters of ethics in relation to the conduct of Members as the CMI of the former LegCo.

22. CMI of the First LegCo adopted, after making certain textual amendments (e.g. replacing references to SO by the rules of RoP and renumbering the footnote to Paragraph 1 as Paragraph 2), the set of the Advisory Guidelines adopted by CMI of the former LegCo, and issued it to all Members at the start of the term.

CMI of the Second LegCo (2000-2004)

23. CMI of the Second LegCo adopted the same set of the Advisory Guidelines as that adopted by the CMI of the preceding term and issued it to all Members at the start of the term. On 7 February 2001, CMI issued, after making some textual amendments, a revised set of Advisory Guidelines to all Members.

24. In 2001, CMI also reviewed RoP 84, which dealt with two issues, namely the voting or withdrawal of Members in case of direct pecuniary interest, and the disclosure of personal pecuniary interests. After consideration, CMI agreed that the provisions of the RoP were adequate, but in the interest of clarity and to dispel uncertainties, separate rules should be made in respect of each of the two issues. Accordingly, a new RoP 83A, amendments to RoP 84, and consequential amendments to RoP 85 were proposed. The proposals were approved by the Council on 3 July 2002 through a motion moved by the Chairman of CMI. The Advisory Guidelines were revised accordingly and then issued to all Members.

CMI of the Third LegCo (2004-2008)

25. CMI of the Third LegCo adopted the same set of the Advisory Guidelines as that adopted by the CMI of the preceding term, and issued it to all Members at the start of the term.

Addition of Paragraph 8

26. 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 decided to revise the Advisory Guidelines by adding a 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 set of the revised Advisory Guidelines adopted by CMI of the Third LegCo is in **Appendix II**.

27. In June 2006, CMI completed a study on the establishment of a mechanism for handling complaints concerning Members' operating expenses reimbursement ("OER") claims or applications for advance of operating funds ("fund-advance applications"). At the Council meeting of 5 July 2006, RoP were amended to 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" was also revised to, among other things, include the handling of complaints concerning Members' OER claims or fund-advance applications.

CMI of the current LegCo (2008-2012)

28. At its first meeting on 20 November 2008, CMI of the current LegCo agreed that the following amendments should be made to the draft Advisory Guidelines:

- (a) paragraphs (3) and (4) be removed from the Advisory Guidelines, since the substance of the two paragraphs 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), and sanctions for failure to comply with any of these rules are already provided in RoP 85. The inclusion of the two paragraphs in the Advisory Guidelines may have the undesirable effect of misleading Members into thinking that the aforesaid rules are advisory in nature;

- (b) paragraph (7) be removed, as amendments had been made to RoP in 2006 setting out the specific conduct required of Members in making claims for reimbursement of the operating expenses or applications for advance of operating funds (RoP 83AA), empowering CMI to consider and investigate related complaints (RoP 73(1)(ca)) and providing for sanctions for failure to comply with RoP 83AA (RoP 85); and
- (c) the headings of “General Standards” and “Specific Standards” be deleted, and the sub-paragraphs of paragraphs (1) and (6) be set out as separate paragraphs.

29. A set of the revised Advisory Guidelines is in **Appendix III**. CMI has also decided that before finalizing the document, the views of all Members should be sought, and they should be invited to attend a briefing session.

Advice sought

30. Members are invited to note the above information.

Council Business Division 3
Legislative Council Secretariat
30 December 2008

**Advisory Guidelines on Matters of Ethics in relation to the Conduct
of Members of the Legislative Council in their capacity as such**

*(Issued by the Committee on Members' Interests under
Legislative Council Standing Order No. 60B(1)(d))*

I. General Standards

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council (Council). (see Footnote)
2. A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or the President for the regulation of the practice and procedure of the Council and its committees or Members' behaviour in their conduct of the business of the Council.

II. Specific Standards

3. In accordance with Standing Order No. 65 -
 - (a) In any debate or proceedings of the Council or any committee at which a Member is present he shall declare any direct pecuniary interests which he has in the matter.
 - (b) A Member shall not vote upon any question, whether in the Council or in any committee, in which he has a direct pecuniary interest.
 - (c) 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, whether in the Council or in any committee, without disclosing the nature of that interest.
4. In accordance with Standing Order No. 64A 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 in (a) and (b) above include personal services by the Member which arise out of or are related in any manner to his membership of the Council;
- (d) financial sponsorships -
 - (i) as a candidate for election to the Council, where to the knowledge of the Member the sponsorship exceeds \$10,000 or 25% of his election expenses; or
 - (ii) 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, where the total value from a single source in the course of one year exceeds 5% of the annual salary of a Member of the Council or where the value of any one-off sponsorship exceeds \$10,000;
- (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, which arise out of or are related in any manner to his membership of the Council, from or on behalf of foreign governments, organizations or persons;
- (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 knowingly 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.

(Footnote: 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. For example, the appearance of a Member in an advertisement to promote a commercial product or service may be regarded as not in keeping with the position and prestige of a Member of the Council. Members are therefore advised to exercise caution when deciding to engage in advertisement activities of a commercial nature as such engagement may run the risk of bringing discredit upon the Council.)

May 1996

**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

**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.

December 2008