

立法會
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Committee on Members' Interests
Paper for the meeting on 26 November 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

Purpose

This paper invites members to note the "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") and issue it to Members of the Fifth 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". The first set of Advisory Guidelines was issued by CMI to all Members in June 1996, after CMI had discussed in-depth the extent to which the conduct of Members should be monitored and studied the practice adopted by other legislatures of a number of Commonwealth countries and the United States in monitoring the conduct of Members of Parliament. Since then, the Advisory Guidelines, with amendments where necessary, was issued by CMI to all Members at the beginning of each legislative term. The Advisory Guidelines issued by CMI of the Fourth LegCo is in the **Appendix**.

The scope of Advisory Guidelines

3. The Advisory Guidelines is advisory in nature. It serves as a reference in the event that it is necessary to make judgment on the conduct of a Member.¹ The Advisory Guidelines provides 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), (2) and (3)). The Advisory Guidelines also sets out the principles that a Member should refrain from taking advantage of his capacity as a Member for furtherance of his private interest (paragraphs (4), (5) and (6)), and should ensure the truthfulness and accuracy of personal information provided to the Council (paragraph (7)).

Issues related to the Advisory Guidelines

Monitoring Members' misconduct

4. As far as Members' conduct in their capacity as LegCo Members is concerned, it is not within CMI's terms of reference to investigate into complaints about Members' misconduct. CMI of the former LegCo had deliberated proposals to empower it to investigate into complaints about Members' misconduct and to formulate a code of conduct for Members to follow. In 1995 and 1996, LegCo twice debated the proposed resolutions to empower CMI to consider and investigate complaints about Members' misconduct, but both resolutions were negated. The reasons expressed by Members during the debates for opposing the resolutions were mainly as follows:

- (a) it was difficult to define what "proper conduct" meant;
- (b) the proposed mechanism might be abused and the investigation alone might damage the Member's public image;
- (c) LegCo Members' conduct was already under public scrutiny and they would be subject to public censure if they misconducted themselves; and

¹ Paragraph 5.7, Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai.

- (d) there was some cynicism about certain Members assuming roles as monitors.²

5. Since the First LegCo, the issue of empowering CMI to monitor the conduct of Members had not been re-visited. In the Fourth LegCo, an investigation committee³ was established, for the first time, under Rule 49B(2A)(Disqualification of Member from Office) of RoP, in respect of a motion to censure a Member under Article 79(7)⁴ of the Basic Law, for misbehaviour. The investigation committee had looked into what kinds of conduct of a Member would constitute "misbehaviour" as stated in Article 79(7). The investigation committee made reference to the Advisory Guidelines issued by CMI but recognized its advisory nature. The investigation committee noted that no standards for the ethical conduct had been laid down in the current RoP.⁵

Sanctions for Members' misconduct

6. 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. Article 79(7) of the Basic Law provides that the President of LegCo shall declare that a Member is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members of LegCo present.

7. The investigation committee noted that the only way to handle complaints about a Member's misconduct other than those within the remit of CMI was to activate the mechanism for the disqualification of the Member from office under Article 79(7) by the moving of a censure motion under Rule 49B(1A) of RoP. LegCo might only choose between

² Paragraphs 7 and 10, LC Paper No. CMI/30/04-05.

³ Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai.

⁴ Article 79(7) of the Basic Law provides that the President of the LegCo shall declare that a Member is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members of LegCo present.

⁵ Paragraphs 5.6 and 5.7, Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai.

disqualifying the Member from office, which was the only sanction available, and not imposing any sanction at all, and there was no other form of sanction.⁶ While understanding that the establishment of a mechanism for handling complaints against Members' misconduct had always been a controversial issue, the investigation committee considered that "with the change of time, LegCo should consider afresh the need to review the current mechanism in order to ensure that there are appropriate mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity, so as to safeguard the credibility of LegCo."⁷

8. To address public concern about Members conducting investigation into complaints about the conduct of their fellow legislators, CMI of the Fourth LegCo had studied the mechanisms for dealing with complaints against Members of Parliament in some selected overseas legislatures. Members noted that both the House of Commons of the United Kingdom and the Canadian House of Commons appointed an independent commissioner to deal with complaints against their Members for breaching a code of conduct and other misconduct. CMI had studied the feasibility of appointing an independent person as a commissioner to handle complaints against Members, and was aware that it would be very difficult for the commissioner to carry out his work in the absence of a code of conduct for Members.⁸ CMI consulted all Members of the Fourth LegCo on its proposal of appointing a commissioner to handle complaints against Members and recommended that the matter be followed up by CMI of the Fifth LegCo. In the event that members decide to follow up the proposal of appointing a commissioner, the issue of whether a code of conduct should be drawn up to replace the Advisory Guidelines ought to be considered at the same time.

Advice sought

⁶ Paragraphs 5.10 and 5.11, Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai.

⁷ Paragraphs 5.14, Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai.

⁸ Sir Malcolm Jack, retired Clerk of the House of Commons of the Parliament of the United Kingdom, had advised CMI that it would be very difficult for the commissioner to carry out his work in the absence of a code of conduct for Members because the present provisions in RoP were in too general a form to provide clear guidance and also because there would be an expectation from the public that the commissioner would also deal with wider matters relating to the conduct of Members as well (see paragraph 6, LC Paper No. CMI/39/11-12).

9. Members are invited to note the Advisory Guidelines in the Appendix and issue it to Members of the Fifth LegCo. Members may wish to consider the issues in paragraphs 5 to 8 above at future meetings.

Council Business Division 3
Legislative Council Secretariat
21 November 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.

June 2009