

**立法會**  
***Legislative Council***

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Date : 3 September 2018  
From : Clerk to Committee on Rules of Procedure  
To : All Members of the Legislative Council

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**Committee on Rules of Procedure**

**Consultation on mechanisms to deal with Members' misconduct**

The Committee on Rules of Procedure ("CRoP") would like to invite Members' views on the following matters:

- (a) whether there is a need to introduce new sanctions against Members' misconduct in the Rules of Procedure ("RoP");
- (b) subject to (a) above, a proposed framework of sanctions against Members for committing grossly disorderly conduct in Council and committee of the whole Council meetings; and
- (c) subject to (a) above, issues relevant to the establishment of an effective mechanism to deal with different types of Members' misconduct in general.

**Background**

2. At its meeting on 25 June 2018, CRoP considered two interrelated matters regarding Members' conduct: (a) a request from The Legislative Council Commission ("the Commission") to examine the need for the establishment of an effective mechanism to deal with Members'

misconduct;<sup>1</sup> and (b) a general framework of key sanction mechanisms for grossly disorderly conduct during meetings that are common among certain legislatures outside Hong Kong.<sup>2</sup>

3. After deliberations, CRoP agreed that all Members should be consulted on (a) whether they agree in principle that new sanctions against Members' misconduct should be introduced in RoP; and (b) if they agree, their views on the types of new sanctions that should be introduced and related issues.

### **Existing rules handling Members' misconduct**

4. Members are expected to observe high standards of behaviour and financial probity in carrying out their public duties. At present, there are no provisions in RoP that specify what constitutes misconduct, nor are there detailed mechanisms on imposing sanctions against Members' misconduct, except for general provisions relating to Members' conduct during meetings, interests and operating expenses, premature publication of evidence, and procedural arrangements under RoP 49B to implement Articles 79(6) and (7) of the Basic Law ("BL") on disqualification of Legislative Council ("LegCo") Members from office. A list of these provisions and the relevant background is set out in **Appendix I**.

5. In June 2009, the Committee on Members' Interest ("CMI") adopted a set of non-binding "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"), which has been issued to all Members. The Advisory

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<sup>1</sup>. At its meeting on 26 April 2018, the Commission discussed an incident that had occurred on 24 April 2018 involving a Member and a government official in the Legislative Council Complex. In the course of discussion, some members of the Commission expressed concerns that incidents involving verbal or physical abuses by some Members against other persons during or outside Council or committee proceedings had occurred from time to time, but there lacked an effective means to impose sanctions for such conduct. The Commission therefore requested CRoP to examine the need for the establishment of an effective mechanism to deal with Members' improper behaviour.

<sup>2</sup>. At the meetings of CRoP held on 6 December 2016, 10 January 2017 and 25 June 2018, members reviewed the issues concerning order in Council and committees at the request of the President, in the light of a number of incidents involving some Members having been ordered by the President to withdraw immediately from the Council for the remainder of the relevant meetings due to their grossly disorderly conduct at those meetings.

Guidelines lay down the important principles for determining whether a Member has met the standard of conduct expected of him or her as a LegCo Member. A copy of the Advisory Guidelines is in **Appendix II**.

## **Past deliberations on Members' misconduct**

### Grossly disorderly conduct in Council and committee meetings

6. Apart from RoP 45(2), which provides that the President, the Chairman of a committee of the whole Council or the chairman of any committee shall order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting, there is no other sanction in RoP that deals with grossly disorderly conduct of Members at Council or committee meetings. Since 2010, CRoP has assessed the adequacy of current measures to maintain order in Council and committees, and a summary of its deliberations is in **Appendix III**. CRoP has also studied the relevant rules and practices of other legislatures, including the United Kingdom, Australia, Germany, India, South Africa, South Korea and Taiwan. A summary of the relevant sanction mechanisms is in **Appendix IV**.

### Members' misconduct in general

7. Members deliberated on various occasions on how Members' misconduct should be handled. Furthermore, since the First LegCo, four Investigation Committees ("ICs") had been formed under RoP 49B(2A) following the moving of a motion by a Member at a Council meeting to censure a Member under BL 79(7). A chronology of events relevant to the deliberations and recommendations of CMI and ICs on Members' conduct is in **Appendix V**.

## **Matters for consideration**

### The need to introduce new sanctions against Members' misconduct in RoP

8. Divergent views persist amongst CRoP members on introducing new sanctions against Members' misconduct in RoP. While the majority of CRoP members consider it necessary to introduce new sanctions, some members have expressed reservations about the suitability of introducing the sanctions adopted in overseas legislatures to LegCo given Hong Kong's political background.

9. After deliberations, CRoP agreed that Members should be consulted on whether they agree in principle to the need to introduce new sanctions against grossly disorderly conduct of Members in Council and committee meetings.

Proposed framework of sanctions against Members for committing grossly disorderly conduct in Council or committee of the whole Council meetings under RoP 45(2)

10. Having regard to the key elements of sanction mechanisms that are common among overseas legislatures studied as set out in Appendix V, Members are also invited to give views on the following types of proposed sanctions (stand-alone or in combination) for further deliberation by CRoP:

(a) *Prohibition from attending future meeting(s)*

A Member who has behaved in a grossly disorderly manner during a meeting of the Council (or a committee of the whole Council) and has been ordered to withdraw immediately from the Council for the remainder of that meeting under RoP 45(2), may, as ordered by the President (or Chairman) or on a motion, be prohibited from attending the next meeting or a number of subsequent meetings of the Council in accordance with a pre-determined scale in RoP;

(b) *Financial penalty*

Where a Member has been ordered to withdraw from a meeting of the Council (or a committee of the whole Council) for grossly disorderly conduct under RoP 45(2), and has, as ordered by the President (or Chairman) or on a motion, been prohibited from attending future Council meetings, the remuneration of this Member shall be withheld during the relevant period. Alternatively, a fine may, as ordered by the President (or Chairman) or on a motion, be imposed upon the Member concerned. The amount of fine, including any increase of thereof for repeated occasions of such misconduct, may be specified in RoP.

11. For paragraph 10(b) above, Members are invited to note that in the absence of specific provisions in Basic Law or the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) empowering the Council to withhold Members' remuneration or impose fines, new legislation or amendments may be required to specifically empower the Council, President (or Chairman) to impose the proposed financial penalties. Consequentially, The Legislative Council Commission Ordinance (Cap. 443) may also have to be amended to empower the Commission to

withhold a Member's remuneration in accordance with an order of the President (or Chairman) because section 17(2) of Cap. 443 at present only requires the Commission to comply with directions given by the Council by resolution. Further deliberations on this issue are required when a more concrete proposal on such financial penalties is to be drawn up.

The need for a mechanism to deal with different types of Members' misconduct in general

12. Apart from the mechanism for disqualification, there is at present no mechanism under RoP to deal with different types of Members' misconduct other than those relating to Members' interests and operating expenses or the premature publication of evidence. Members may wish to consider whether there is a need to establish an effective mechanism to deal with different types of Members' misconduct.

**Questionnaire**

13. Members are invited to give their views on the issues set out in paragraphs 8 to 12 above by completing and returning the questionnaire at **Appendix VI by Tuesday, 2 October 2018.**

(Daniel SIN)  
Clerk to  
Committee on Rules of Procedure

Encl.

c.c. Hon Andrew LEUNG Kwan-yuen, GBS, JP (President of the  
Legislative Council)  
Hon Paul TSE Wai-chun, JP (Chairman)  
SG, LA, DSG, ASG1, ASG2, ASG3, ASG4, SALA2, H(PI), ALA4

### **Existing rules governing Members' conduct in their capacity as such**

#### Rule 49B of the Rules of Procedure ("RoP")

1. RoP 49B provides for the procedural arrangements to implement Article 79(6) of the Basic Law ("BL") and BL 79(7) on disqualification of Legislative Council ("LegCo") Members from office. RoP 49B(1) prescribes the procedure to relieve a Member of his duties when he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence, while RoP 49B(1A) prescribes the procedure to censure a Member for misbehaviour or breach of oath. The passage of a motion moved under any of these two provisions requires a two-thirds majority vote of the Members present at a Council meeting. RoP 49B(2A) also sets out the procedure for referring the matter stated in a censure motion under RoP 49B(1A) to an investigation committee ("IC"). RoP 73A provides for the procedures for the establishment and operation of IC.

#### RoP 42 and RoP 45

2. RoP 42 (Behaviour of Members during meeting) lays down certain standards of behaviour for Members to abide by during Council and committee meetings. RoP 45 (Order in Council and Committee) further provides that Members may 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.

#### RoP 82 and RoP 83

3. To guard against lobbying for reward or consideration, RoP 82 prohibits Members from appearing before the Council or any committee or subcommittee in their professional capacity for or on behalf of a party or in a capacity for which they are to receive a fee or award. 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. RoP 83 defines the registrable interests for Members, and lists out the requirements for Members to furnish to the Clerk such interests for public inspection.

### RoP 83A

4. Under RoP 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 or will appear to be 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 matter. RoP 83A largely follows a resolution passed by the UK House of Commons on 22 May 1974 concerning declaration of Members' financial interests.

### RoP 83AA

5. Under RoP 83AA, Members are required to ensure that the information they provided is true, accurate and complete, and to act according to any undertaking given, when making a claim for reimbursement of operating expenses or applying for advance of operating funds.

### RoP 84

6. Under RoP 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, RoP 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".

### RoP 85

7. Under RoP 85, any Member who fails to comply with RoP 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 84(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.

### RoP 81

8. Under RoP 81(1), Members are prohibited from disclosing the evidence taken before, or documents presented to any committee referred to under RoP 80 (i.e. any standing committee or other committee authorized by the Council to summon witnesses), before the committee has presented its report to the Council, except where the evidence is taken at meetings held in public. Under RoP 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. RoP 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 Parliament and may entail punishments ranging from reprimand or admonition, suspension with or without salary withheld, to expulsion.



**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.

**Deliberations of the Committee on Rules of Procedure  
related to sanctions against Members' grossly disorderly conduct  
in Council and committee meetings**

<b>Session</b>	<b>Event</b>
2010-2011	<p>In the light of incidents involving some Members behaving in a disorderly manner at committee meetings, the Committee on Rules of Procedure ("CRoP") discussed ways of ensuring the smooth operation of committees. The Council subsequently passed a motion moved by the CRoP Chairman at the meeting of 11 May 2011 to extend the application of Rules 44 and 45(2) of the Rules of Procedure ("RoP") to all committees.</p> <p>CRoP reviewed the rules and practices of overseas legislatures, including the Parliaments of Germany, India and South Africa, on their President/Speaker's authority to suspend the service of a Member for repeated or persistent grossly disorderly conduct at sittings. During the session, CRoP remained of the view that it would not be necessary to amend RoP to impose sanctions to deal with Members' disorderly conduct in Council.</p>
2011-2012	<p>CRoP studied the relevant rules and practices of selected overseas legislatures dealing with violent acts, in particular the throwing of objects, committed by Members at sittings. These legislatures included the Parliaments of the United Kingdom, Canada, Australia, New Zealand, South Korea and India as well as the Legislative Yuan of Taiwan.</p> <p>CRoP considered Hon IP Kwok-him's proposal to amend RoP 45(2) which sought to ban a Member, who had been ordered by the President to withdraw from a Council meeting for behaving in a grossly disorderly manner at the meeting under RoP 45(2) on two occasions, from attending the following Council meeting if a motion to sanction such is passed through the moving of a motion by the President.</p> <p>CRoP voted in favour of Mr IP 's proposal to amend RoP 45(2), and decided to follow up the matter in the Fifth Legislative Council ("LegCo").</p>

<b>Session</b>	<b>Event</b>
2013-2014	<p>CRoP examined the proposal of Dr Hon CHIANG Lai-wan and Hon CHAN Kam-lam that RoP should be tightened to deal with repeated grossly disorderly conduct of Members at Council meetings by making reference to the relevant provisions of the Standing Orders of the former Legislative Council of Hong Kong (<b>Annex</b>).</p> <p>CRoP also considered a proposed procedure with specific sanction to deal with repeated grossly disorderly conduct of Members at Council meetings based on Hon IP Kwok-him's proposal, and decided to consult Members on the proposed procedure. The relevant consultation circular (LC Paper No. CROP 70/13-14) was issued to all Members on 5 June 2014.</p> <p>As most Members of the pan-democratic camp considered it unnecessary to amend RoP to provide for a specific sanction against repeated or persistent grossly disorderly conduct, the CRoP Chairman decided that he would not move a motion in the Council to amend RoP, as there was little chance that such a motion would be passed.</p>
2016-2017	<p>CRoP revisited the issue. After studying the experiences of other legislatures and assessing the adequacy of current measures to maintain order in Council and committee, CRoP considered that the proposal put forward by Hon IP Kwok-him in the Fifth LegCo might be used as a starting point for further discussion. CRoP further considered that a framework setting out various options, including the suspension of Members or prohibition from attending meetings, and the introduction of some forms of financial penalties for Members, may be drawn up for further consideration by CRoP before seeking views of all Members regarding the options.</p>



附錄 III 的附件  
Annex to Appendix III  
立法會CROP 35/13-14號文件  
LC Paper No. CROP 35/13-14

立法會  
議事規則委員會主席  
譚耀宗先生 GBS, JP

譚主席：

要求收緊「議員行為不檢」議事規則

鑑於有議員屢次在議事廳會議進行時行為不檢點，引致主席命令有關議員退席，議事規則委員會並未有作出任何建議，以改善情況，我等深表不滿，強烈要求主席收緊尺度，確保議會運作暢順。

本屆立法會，有議員在會議進行中屢次違反議事規則，經主席再三警告亦屢勸不聽。此等議員之行為不獨是對議會不尊重，亦是對在席其他議員做成干擾。更甚的是對我們下一代做成極壞榜樣，甚至令出席立法會的社會人士「有樣學樣」。

我等知悉香港立法機關於1929年已在其會議常規第23條(1)-(9)項載有處理議員行為不檢的條文，該條文內註明，如有議員在會議進行期間行為極不檢點，主席需要把有關議員點名，並即時在立法會透過議案將該名議員的職務暫停。同時，我等亦建議考慮暫停發放被裁定停職議員的薪津以作懲處。該項規定雖然有嚴苛之嫌，但現時立法會的議事規則無法制裁屢次不遵守規則的議員，致使有人變本加厲，蓄意違規擾亂會議正常運作。

為此，我等現要求主席及議事規則委員會從速考慮，將上述提及之會議常規加入現有議事規則，以維護本會議事秩序。

立法會議員

蔣麗芸 陳鑑林

2014年1月28日

真誠為香港

**Extract from the Standing Orders  
made by the Legislative Council of Hong Kong on 27 December 1929**

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**23. Breaches of Order.**

(1) If a Member show disregard for the authority of the chair, or abuse the rules of the Council by persistently and wilfully obstructing the business of the Council, or otherwise, the President shall direct the attention of the Council to the incident, mentioning by name the member concerned. A motion may then be made upon which the President shall forthwith put the question, no amendment, adjournment, or debate being allowed, "That such member be suspended from the service of the Council". If such an offence shall have been committed in a committee of the whole Council, the Chairman shall forthwith suspend the proceedings of the committee and report the circumstances to the Council; and the President shall on a motion being made thereupon put the same question, without amendment, adjournment or debate, as if the offence had been committed in the Council itself.

(2) Not more than one member shall be named at the same time, unless several members present together have jointly disregarded the authority of the chair.

(3) If a member be suspended under the provisions of this order his suspension shall last until determined by the Council.

(4) The President or Chairman, after having called the attention of the Council or committee to the conduct of a member who persists in irrelevance or tedious repetition either of his own arguments or of the arguments used by other members in debate, may direct the member to discontinue his speech.

(5) The President or Chairman shall order members whose conduct is grossly disorderly to withdraw immediately from the Council Chamber during the remainder of the day's sitting.

(6) If a direction to withdraw under paragraph (5) of this order be not complied with at once or if on any occasion the President or Chairman deem that his powers under that paragraph are inadequate, he may name such member or members in pursuance of paragraph (1) of this order.

(7) The President or Chairman whether acting under paragraph (1) or (5) of this order may direct such steps to be taken as are required to enforce his order.

(8) Members who are suspended under paragraph (1) of this order or are directed to withdraw under paragraph (5), shall forthwith withdraw from the precincts of the Council Chamber.

(9) Nothing in this order shall be deemed to prevent the Council from proceeding against any member for any breach of order not specified herein or from proceeding in any other way it thinks fit in dealing with the breaches of order herein mentioned.

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Sanction against disorderly conduct of Members during parliamentary proceedings in selected places<sup>1</sup>

	House of Commons of the United Kingdom	House of Representatives of Australia	Bundestag of Germany	Lok Sabha of India	National Assembly of South Africa	National Assembly of South Korea	Legislative Yuan of Taiwan
Definition/ examples of disorderly conduct	(a) Irrelevance or tedious repetition; (b) Minor breach of order; (c) Use of disorderly or unparliamentary expressions; (d) Grossly disorderly conduct; (e) Grave disorder; and (f) Obstruction of the business of the House otherwise than by disorderly conduct or persistence in irrelevance or tedious repetition.	(a) Persistently and wilfully obstructed the House; (b) Used objectionable words, which he or she has refused to withdraw; (c) Persistently and wilfully refused to conform to a standing order; (d) Wilfully disobeyed an order of the House; (e) Persistently and wilfully disregarded the authority of the Speaker; or (f) Considered by the Speaker to have behaved in a disorderly manner.	(a) Digress to keep to the subject under debate; (b) Serious breach of order; or (c) Failure to respect the dignity of the Bundestag.	A Member coming into the well of the House or abusing the Rules of the House persistently and wilfully obstructing its business by shouting slogans or otherwise.	(a) Deliberately creating serious disorder or disruption; (b) Physically intervening, or obstructing the removal of a member who has been ordered to leave the House; (c) Repeatedly undermining the authority of the presiding officer or refusing to obey rulings; (d) Persisting in making serious allegations against a member without adequate substantiation; (e) Using or threatening violence against a member; or (f) Acting in any other way to the serious detriment of the dignity, decorum or orderly procedure of the House.	(a) Disturbance of order on the floor of the meeting; (b) Insulting other Members during a meeting; (c) Interference with the speech of another Member by using violence, or speaking without permission or engaging in a clamorous act; (d) Carrying items which may obstruct the meeting's progress; (e) Illegally occupying the seat of the Speaker or the chairperson; or (f) Obstructing other Members from attending a meeting.	(a) Disobey the rulings of the President; (b) Use abusive or insulting language; (c) Speak beyond the time limit allowed; (d) Interrupt the speech of other Members; (e) Exhibit violent movement or destroy public property; (f) Occupy the President's podium or obstruct the proceedings; (g) Coerce others; (h) Carry dangerous goods; (i) Improperly request or interfere with staff of the Legislative Yuan; or

<sup>1</sup> In the deliberation of the sanction mechanisms of these legislatures, the Committee on Rules of Procedure ("CRoP") notes that the rules of procedure or standing orders of those legislatures studied invariably contain sanctions against Members' disorderly conduct. Some of those rules or standing orders have expressly defined what constitutes disorderly conduct. For rules or standing orders of certain legislatures where "disorderly conduct" is not expressly defined, provisions are often included to disallow certain specified behaviours and to empower the Speaker or the chairperson to maintain order at meetings. It is a common feature among the relevant rules of the legislatures studied that when a Member who has persistently breached a rule or order, or has disregarded the authority of the Speaker, he or she will usually be considered as behaving in a grossly disorderly manner and consequently subject to sanctions. CRoP also notes that some of the legislatures studied have, through standing orders or relevant legislation, imposed certain form of financial penalties against Members for disorderly conduct, including imposing fines on the Members concerned, or withholding part of their salaries or allowances, when they are suspended from the service of the legislature as a result of breaching rules.

	House of Commons of the United Kingdom	House of Representatives of Australia	Bundestag of Germany	Lok Sabha of India	National Assembly of South Africa	National Assembly of South Korea	Legislative Yuan of Taiwan
							(j) Violate other rules and regulations which should be complied by Members.
Disorderly conduct defined or listed in the relevant Rules of Procedures/ Standing Orders/ legislation	No.	Yes.	No.	Yes.	Yes.	No.	Yes.
Sanction against disorderly conduct during parliamentary proceedings	(a) Withdrawal from the House for the remainder of the sitting; or (b) Naming and suspension.	(a) Leaving the House for one hour; or (b) Naming and suspension.	(a) Fine; and/or (b) Leaving the Chamber for the remainder of the sitting and suspension.	(a) Withdrawal from the House for the remainder of the sitting; or (b) Naming and suspension.	(a) Withdrawal from the House for the remainder of the sitting; (b) Suspension; or (c) Such action as decided by the Speaker.	(a) Warning at an open meeting; (b) Apology at an open meeting; (c) Suspension; (d) Reduction of allowance and expenses; and (e) Expulsion.	(a) Verbal apology; (b) Written apology; (c) Suspension from participating in the meeting; and (d) Suspension from the service of the Legislative Yuan.
Length of suspension	(a) First occasion – 5 sitting days; (b) Second occasion in the same session – 20 sitting days; and (c) Any subsequent occasion – suspension period decided by the House.	(a) First occasion – 24 hours; (b) Second occasion in the same calendar year – 3 consecutive sittings; and (c) Any subsequent occasion in the same calendar year – 7 consecutive sittings.	On any occasion - up to 30 sitting days as decided by the President.	On any occasion – a period not exceeding the remainder of the session.	(a) First occasion – 5 parliamentary working days; (b) Second occasion in the same session – 10 parliamentary working days; and (c) Any subsequent occasion in the same session – 20 parliamentary working days.	For a period not exceeding 30 days.	(a) Suspension from participating in the meeting of the Legislative Yuan for four to eight sittings; or (b) Suspension from the service of the Legislative Yuan for three to six months, if passed by more than two-thirds of Members.

	<b>House of Commons of the United Kingdom</b>	<b>House of Representatives of Australia</b>	<b>Bundestag of Germany</b>	<b>Lok Sabha of India</b>	<b>National Assembly of South Africa</b>	<b>National Assembly of South Korea</b>	<b>Legislative Yuan of Taiwan</b>
How the sanction of suspension is imposed	By passage of a motion in the House.	By passage of a motion in the House.	By order of the President.	For grossly disorderly conduct - by order of the Speaker.  For disorderly conduct of lesser gravity – by passage of a motion in the House.	By order of the Speaker.	By decision of the National Assembly upon the passage of a resolution, on recommendation by the Special Committee on Ethics.	By decision of the Legislative Yuan upon the passage of a resolution, on recommendation by the Discipline Committee.
Source of power for suspension	Standing Orders ("SO") 44 and 45.	SO 93 and 94.	SO 38 and 39.	<ul style="list-style-type: none"> <li>▪ Rules 373, 374 and 374A in the Rules of Procedure and Conduct of Business in Lok Sabha; and</li> <li>▪ Paragraph 41 (60) in Chapter II of the Handbook for Members in Lok Sabha.</li> </ul>	Rules 70 to 75 in Chapter 5 of the Rules of the National Assembly.	Articles 155 to 163 of the National Assembly Act.	Article 28 of the Legislator Demeanor Law.
Mechanism to terminate a suspension	On the third and subsequent occasions in a session when a Member is suspended, the length of the suspension will continue until the House resolves that the suspension of a Member do terminate.	No such mechanism.	A Member under suspension may lodge a reasoned objection in writing for a decision of the House without debate at the next sitting.	The House may, at any time, on a motion being made, resolve that a suspension be terminated.	A Member under suspension may submit a written expression of regret to the Speaker, who may then approve to terminate the suspension.	No such mechanism.	No such mechanism.
Whether the Member can still serve in a committee of the House during suspension	Yes, the Member can still serve on a committee for the consideration of a private bill to which he has been appointed before suspension.	Yes, the Member can still serve on a committee of the House.	No.	No.	No, but if the Member being suspended is a Minister or a Deputy Minister, the Speaker may order otherwise.	No.	No.



	<b>House of Commons of the United Kingdom</b>	<b>House of Representatives of Australia</b>	<b>Bundestag of Germany</b>	<b>Lok Sabha of India</b>	<b>National Assembly of South Africa</b>	<b>National Assembly of South Korea</b>	<b>Legislative Yuan of Taiwan</b>
Financial penalties against Members' disorderly conduct	The salary of a Member suspended from the service of the House shall be withheld for the duration of his suspension under SO 45A.	No financial penalties.	The President may impose a fine of €1 000 (HK\$9,064) on a Member for a non-minor breach of order or failure to respect the dignity of the Bundestag. Any repetition of offence will result in an increase of fine to €2,000 (HK\$18,129).	If a Member is suspended from the services of the House for the remainder of the session (other than suspended for a specified period within the session), he/she cannot claim the daily allowance for this period. The daily allowance is Rs. 2000 (HK\$230) per day. The suspended Member will continue to receive his or her salaries during suspension.	No financial penalties.	For serious disorder <sup>2</sup> : (a) If the disciplinary action was a warning or apology at a meeting, reduction of allowances, expenses by half for two month; and (b) If the disciplinary action was suspension of attendance at meetings for a period of up to 30 days, forfeiture of allowances and expenses for three months.	Members who are suspended will not receive salary or allowances for the period of suspension.
Source of power for financial penalties	SO 45A.	N/A.	SO 37.	Paragraph 41 (60) in Chapter II of Handbook for Members in Lok Sabha.	N/A.	Article 163 of the National Assembly Act.	Article 28 of the Legislator Demeanor Law.
Parliamentary committee which considers matters relating to Members' disorderly conduct in meetings	No such committee with such terms of reference.	No such committee with such terms of reference.	No such committee with such terms of reference.	Committee on Ethics.	Powers and Privileges Committee <sup>3</sup> .	Special Committee on Ethics, on advice by the Ethics Investigation Advisory Committee.	Discipline Committee.

<sup>2</sup> For all other types of disorderly conduct, if a Member is suspended, the Member's allowances as well as expenses for legislative activities and special activities are reduced by half for the duration of a Member's suspension.

<sup>3</sup> The Power and Privileges Committee considers allegation of contempt of the National Assembly, when such cases are referred to it by the Speaker.

**Chronology of events relevant to the deliberations and  
recommendations of Committee on Members' Interest and  
Investigation Committees on Members' conduct**

**I. Proposals to expand the terms of reference of Committee on Members' Interest and establish guidelines for Members' conduct<sup>1</sup>**

Date	Event
May 1994	Pursuant to the decision of the House Committee ("HC") made at its meeting on 30 May 1994, the Committee on Members' Interest ("CMI") discussed proposal to set up a committee to monitor conduct of Members
February 1995	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. In February 1995, CMI drew up a set of draft "Guidelines on the Standards of Conduct for Members of the Legislative Council" ("the draft Guidelines"). CMI proposed a set of the draft Guidelines.
June 1995	CMI submitted a report to HC following a public consultation, recommending that the draft Guidelines be adopted, and CMI should be empowered to carry out investigation into complaints about misconduct of Members.

<sup>1</sup> CMI, established since 1991, is empowered under Rule 73 of the Rules of Procedure ("RoP") to consider and investigate complaints against Members relating to the registration of Members' interests (RoP 83) and declaration of pecuniary interests (RoP 83A). Apart from an investigation committee, CMI is the only committee which is empowered to handle complaints against Members' conduct, and may recommend the Council to admonish, reprimand or suspend a Member who fails to comply with RoP 83, 83A, 83AA or 84. But its investigatory remit only covers matters concerning registration and declaration of interests, and claims for operating expenses reimbursement ("OER") and applications for advance of operating funds since July 2006. In the light of this confined scope, Members had considered in the past to expand the terms of reference of CMI to carry out formal investigation into complaints relating to Members' misconduct.

<b>Date</b>	<b>Event</b>
July 1995	Motion by Chairman of CMI to amend the Standing Orders to empower CMI to consider and investigate complaints about Members' misconduct negated by a vote of 28 to 20.
Jan 1996	After the commencement of the 1995-1997 Legislative Council ("LegCo") term, CMI conducted a second round of consultation.
February 1996	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 preferred the issuance of a set of advisory guidelines. CMI decided to resubmit the issue for the Council's decision following a second round of consultation.
April 1996	Motion by Chairman of CMI to empower CMI to carry out investigation into complaints about Members' misconduct negated by a vote of 36 to 11.
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.
June 2005	HC voted in favour of recommendations of the Subcommittee to Consider Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims, which sought to establish a mechanism for handling complaints concerning Members' OER claims.
September 2005 and 29 May 2006	CMI agreed in principle to take up the additional responsibility to handle complaints relating to Members' OER claims, and held eight meetings to deliberate the issues involved.

<b>Date</b>	<b>Event</b>
May 2006	CMI proposed to revise its Procedure for Handling Complaints Received in Relation to the Registration and Declaration of Members' Interests, to include the handling of complaints concerning Members' OER claims and applications for advance of operating funds and consulted all Members.
5 July 2006	Council passed resolution to amend RoP 73 and RoP 85 and the new RoP 83AA as recommended by CMI.

**II. Proposal to appoint an independent commissioner to handle complaints against Members to enhance credibility of the complaints handling process**

<b>Date</b>	<b>Event</b>
May 2011	CMI of the Fourth LegCo considered complaint handling mechanisms against Members in the United Kingdom ("UK") and Canada parliaments.
January to May 2012	In view of the inadequacies of mechanisms to handle complaints against Members in LegCo and the need to address the public concern about Members conducting investigation into complaints made against their fellow legislators, CMI conducted a comprehensive review into such mechanisms. Study on the similar mechanisms adopted by some selected overseas legislatures was also conducted. <sup>2</sup> Advice from Sir Malcolm JACK, retired Clerk of the House of Commons in UK had been sought.
June 2012	As a first step to addressing the problem of the public perception of the way the existing system

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<sup>2</sup> The legislatures studied included: 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.

Date	Event
	works, CMI proposed that an independent person as a commissioner should be appointed to receive and investigate complaints against Members. All Members consulted for the first time on the proposal. <sup>3</sup>
January 2013	CMI of the Fifth LegCo considered the outcome of the consultation in the previous term which was in favour of appointing a commissioner, and deliberated on the issues. Members of CMI of the Fifth LegCo expressed diverse views.
February 2013	Second consultation on all Members regarding the proposal to appoint a commissioner.
April 2013	As the outcome of the 2013 consultation showed that a majority of Members did not support such proposal, CMI decided not to take forward the matter. <sup>4</sup>

<sup>3</sup> Under the proposal, while CMI would have oversight of the work of the commissioner, CMI should not involve itself in deciding whether a case received should be followed up as well as in the investigation process. The commissioner should independently collect information from the complainant and/or the Member concerned in deciding whether a complaint ought to be further investigated. Where an investigation is to be promulgated, the procedural steps devised by CMI would have to be followed and CMI ought to be duly informed. The commissioner should report his findings to CMI, which should in turn decide whether or not to accept the findings in the report. In the course of investigation, the commissioner should have access to legal advice. Upon the completion of the review of the commissioner's report, CMI may recommend any sanction to be imposed on the Member under complaint under RoP 85 in a report to the Council.

<sup>4</sup> While more Members had expressed support for the proposal in the consultation conducted in June 2012 during the Fourth LegCo, about 50% of Members opposed the proposal at the consultation conducted in February 2013 in the Fifth LegCo. During their deliberation, members of CMI of the Fifth LegCo expressed diverse views on the proposal. Some supported the proposal on the grounds that the appointment of a commissioner could address the public concern about Members conducting investigation into the conduct of their fellow legislators, and the complaint handling process would be expedited by entrusting the investigatory work with the commissioner. Those who opposed considered that the concern about Members conducting investigation into the conduct of their fellow legislators would still remain, as CMI still had to decide whether to accept the commissioner's findings and whether sanction should be recommended. Furthermore, unlike the UK House of Commons which has 650 Members, LegCo has a membership of 70 only and the relatively small number of complaints may not justify the appointment of a commissioner, and the appointment of a commissioner may provide a ready channel for lodging frivolous complaints against Members.

### III. Recommendations by Investigation Committees formed under RoP 49B(2A) following the moving of a motion to censure a Member under Article 79(7) of the Basic Law

Date	Event
March 2012	<p>In its report to the Council, the Investigation Committees ("IC") established in the Fourth LegCo in respect of the motion to censure Hon KAM Nai-wai ("1<sup>st</sup> IC") considered that:</p> <ul style="list-style-type: none"><li>(a) while Members might be punished for misconduct such as non-disclosure of interests under RoP, the only way to handle complaints against other misconduct was to activate the mechanism for disqualification. This would create a dilemma where LegCo might either impose the ultimate sanction regardless of the gravity of the misconduct, which could be excessively severe; or not to impose any sanction on account of the fact that the gravity of the misconduct did not warrant disqualification, which could undermine the credibility of LegCo; and</li><li>(b) what RoP was most in need of was a comprehensive mechanism for handling complaints against Members' misconduct of varying gravity.<sup>5</sup></li></ul> <p>As to how "misbehaviour" under Article 79(7) of the Basic Law ("BL") should be construed, the 1<sup>st</sup> IC considered that:</p> <ul style="list-style-type: none"><li>(a) prudence must be exercised when invoking this power to disqualify Members from office, since it was the most severe sanction that might be imposed on an individual Member, which was in effect tantamount to overturning the decision made by voters in</li></ul>

<sup>5</sup> Report of the LegCo Investigation Committee established under RoP 49B(2A) in respect of the Motion to censure Honourable KAM Nai-wai, Chapter 5, Paragraphs 5.9-5.11.

Date	Event
	<p>an election;</p> <p>(b) as there were no standards for the ethical conduct of Members laid down in RoP, and since it was difficult to gauge the damage caused by the conduct of an individual member to the reputation of LegCo, the formulation of clear and explicit criteria for defining "misbehaviour" as stated in BL 79(7) was not easy; and</p> <p>(c) the mechanism under BL 79(7) should not be applicable to conduct purely related to a Members' personal or private life, unless such conduct seriously affect the reputation of LegCo as a whole.<sup>6</sup></p>
April 2018	<p>The IC established in the Sixth LegCo in respect of the motion to censure Dr Hon CHENG Chung-tai ("2<sup>nd</sup> IC") considered that:</p> <p>(a) this "all or nothing" dichotomy was not the most desirable way of handling Members' misbehaviour of varying degrees of severity; and</p> <p>(b) it would be worthwhile for Committee on Rules of Procedure to examine this subject.<sup>7</sup></p> <p>As on how "misbehaviour" under BL 79(7) should be construed, the 2<sup>nd</sup> IC was of the view that bringing serious discredit upon LegCo and acting contrary to the generally assumed standard of conduct expected of a LegCo Member should</p>

<sup>6</sup> Report of the LegCo Investigation Committee established under RoP 49B(2A) in respect of the Motion to censure Honourable KAM Nai-wai, Chapter 5, Paragraphs 5.6-5.8.

<sup>7</sup> Report of the LegCo Investigation Committee established under RoP 49B(2A) in respect of the Motion to censure Dr Hon CHENG Chung-tai, Chapter 4, Paragraph 4.36.

<b>Date</b>	<b>Event</b>
	be the key elements constituting a Member's "misbehaviour" under BL 79(7). <sup>8</sup>

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<sup>8</sup> Report of the LegCo Investigation Committee established under RoP 49B(2A) in respect of the Motion to censure Dr Hon CHENG Chung-tai, Chapter 4, Paragraph 4.46.



**Questionnaire**  
(to be returned by Tuesday, 2 October 2018)

Fax No. : 2543 9197

To : Mr Daniel SIN  
Clerk to Committee on Rules of Procedure  
Legislative Council

**Committee on Rules of Procedure**

**Consultation on mechanisms to deal with Members' misconduct**

My views on the proposed mechanisms to deal with Members' misconduct as set out in LC Paper No. CROP 93/17-18 are as follows:

*(Please tick  as appropriate. If the space for comments is insufficient, please provide your comments in separate sheets.)*

**I. The need to introduce new sanctions against grossly disorderly conduct of Members in Council and committee of the whole Council meetings**

1. **There is a need to introduce new sanctions against grossly disorderly conduct of Members committed during Council or committee of the whole Council meetings** (paragraph 9 of the paper).

Support in principle

Not support

No comment

Other views, if any:

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**II. Proposed framework of sanctions against Members for committing grossly disorderly conduct in Council or committee of the whole Council meetings under RoP 45(2)**

**2. A Member who has been ordered to withdraw immediately from the Council (or a committee of the whole Council) for the remainder of that meeting under RoP 45(2), may, as ordered by the President (or Chairman), or on a motion, be prohibited from attending the next meeting(s)/a number of subsequent meetings of the Council as pre-determined in the RoP (paragraph 10(a) of the paper).**

- Support in principle
- Not support
- No comment

Other views, if any:

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**3. Where a Member has been ordered to withdraw from a meeting of the Council (or a committee of the whole Council) for grossly disorderly conduct under RoP 45(2), and has, as ordered by the President (or Chairman) or on a motion, been prohibited from attending future Council meetings, the remuneration of this Member shall be withheld during the relevant period. Alternatively, a fine may, as ordered by the President (or Chairman) or on a motion, be imposed upon the Member concerned. The amount of fine, including any increase of thereof for repeated occasions of such misconduct, may be specified in RoP (paragraph 10(b) of the paper).**

- Support in principle
- Not support
- No comment

Other views, if any:

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**IV. Additional comments**

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Signature : \_\_\_\_\_

Name of Member : \_\_\_\_\_

Date : \_\_\_\_\_