

Document of Haizhu District People's Government of Guangzhou Municipality

Hai Fu Gui [2022] No. 2

Notice of Haizhu District People's Government of Guangzhou Municipality on the Release of the *Rules of Haizhu District on Governmental Legal Counseling*

To: All sub-district offices in Haizhu District and all sectors of and all agencies directly under the Haizhu District People's Government of Guangzhou Municipality

This is a release of the *Rules of Haizhu District on Governmental Legal Counseling* with the approval of the Haizhu District People's Government of Guangzhou Municipality. Please act accordingly and report any relevant problems directly to the Haizhu District Bureau of Justice.

Haizhu District People's Government of Guangzhou Municipality
July 14, 2022

Rules of Haizhu District on Governmental Legal Counseling

Article 1 These Rules are formulated in accordance with the *Rules of Guangdong Province on Governmental Legal Counseling*, with reference to the *Notice of the General Office of the People's Government of Guangzhou Municipality on the Release of the Measures for the Employing of Perennial Legal Counsels by Guangzhou Government Sectors* (Sui Fu Ban Gui [2022] No. 1), on the basis of the actual conditions of Haizhu District and with a view to regulating governmental legal counseling and improving the law-based administration.

Article 2 These Rules are applicable to the governmental legal counseling work conducted by the Haizhu District People's Government of Guangzhou Municipality, the government sectors thereof and sub-district offices.

Article 3 Governmental legal counseling shall be based on facts and laws, with a focus on beforehand prevention and in-process control of legal risks, supplemented by post legal remedies.

Article 4 The district judicial authority, as the competent legal counseling agency of the district government, shall take charge of the governmental legal counseling work of the District and be responsible for handling the legal affairs of the District and guiding and supervising the legal counseling work of all subdistrict offices and government sectors/agencies in the District.

The district judicial authority shall, in accordance with the Law of the People's Republic of China on Lawyers and the Measures for the Administration of Law Firms, guide, coordinate and supervise the lawyers and law firms providing governmental legal counseling services.

Each subdistrict office or government sector/agency shall improve its legal counseling mechanism, with the department responsible for legal work serving as its legal counseling department to undertake its internal legal counseling work. For a subdistrict office or government sector/agency without any legal work department, a special division shall be designated to undertake its internal legal counseling work.

Article 5 The governmental legal counsels are mainly personnel from the internal legal work departments as well as the experts and lawyers invited.

Article 6 All subdistrict offices and government sectors/agencies with many legal tasks, especially those with the administrative licensing, administrative punishment and administrative coercion powers, shall employ experts or lawyers as perennial legal counsels.

A subdistrict office or government sector/agency with relatively less legal tasks may explain in writing to the district government the reason why it does not need to employ perennial legal counsels. With the approval of the district government, it may not employ any perennial legal counsel.

All subdistrict offices and government sectors/agencies may employ experts and lawyers to provide special legal services as needed.

Article 7 A law firm has the right to provide governmental legal counseling services only when it guarantees that it has not been subject to administrative punishment by the judicial authority or disciplinary action by the bar association in the past three years.

Article 8 A lawyer serving as a governmental legal counsel shall meet the following requirements:

- (1) Loyal to the Constitution, conforming to the law, politically reliable, in support of the Party's theory, line, principles and policies and generally as a member of the Communist Party of China;
- (2) With good professional ethics and great sense of social responsibility;
- (3) With more than 5 years of practice experience;
- (4) Having not been subject to criminal punishment, administrative punishment imposed by the judicial authority or industrial punishment imposed by the bar association;
- (5) Other requirements from the employer.

Article 9 An expert serving as a governmental legal counsel shall meet the following requirements:

- (1) Loyal to the Constitution, conforming to the law, politically reliable, in support of the

Party's theory, line, principles and policies and generally as a member of the Communist Party of China;

- (2) With good professional ethics and great sense of social responsibility;
- (3) Having made remarkable achievements in law teaching, law research and other fields, thus having a certain professional influence;
- (4) Having not been subject to criminal punishment or punishment imposed by the employer;
- (5) Other requirements from the employer.

Article 10 The employing of experts and lawyers as governmental legal counsels for the district government shall be done by the legal counseling department of the district government, which shall select qualified personnel on the basis of openness, fairness, impartiality and competitive selection with the approval of the district government.

The employing of experts and lawyers as governmental legal counsels for a subdistrict office or government sector/agency shall be done through selection of qualified personnel on the basis of openness, fairness, impartiality and competitive selection.

Article 11 The governmental legal counsel employment costs of a subdistrict office or government sector/office shall be included into its internal budget and borne by itself.

A subdistrict office or government sector/office employing governmental legal counsels shall abide by the relevant provisions on the government procurement of services. If it is necessary to perform the procedures of government procurement of services, uniform procurement shall be adopted in accordance with the relevant provisions on government procurement.

Article 12 A governmental legal counsel shall provide legal services for the following matters:

- (1) Providing legal advice for major administrative decisions and important administrative acts;
- (2) Providing legal advice for the formulation of normative documents;
- (3) Acting as the agents for administrative reconsideration, litigation, arbitration, enforcement and other non-litigation legal affairs;
- (4) Participating in the negotiation of major projects, assisting in the drafting, revision and review of important legal documents;
- (5) Reviewing major contracts to which the employer is a party;
- (6) Participating in the response to major emergencies and mass incidents involving legal affairs;
- (7) Other affairs requiring the participation of governmental legal counsels.

Article 13 When handling governmental legal affairs, the employed governmental legal counsel enjoys the following rights:

- (1) Independently presenting legal opinions and advices based on facts and laws without interference from any organization or individual;
- (2) Having access to relevant data based on the work needs or the authorization of the employer, and obtaining information, documents and other necessary working conditions and facilities related to the performance of duties;
- (3) Obtaining the agreed work remunerations and treatments;
- (4) Applying for early termination of contract with reasonable reasons;
- (5) Other rights agreed with the employer.

Article 14 The employed governmental legal counsel or law firm shall perform the following obligations when handling governmental legal affairs:

- (1) Shall abide by the confidentiality rules and regulations, and shall not disclose the confidential information learned when handling governmental legal affairs as well as the information, business secrets and personal privacy that the employer considers not to be made public, and shall not disclose the work content undertaken to the public without authorization;
- (2) Shall not take advantage of the non-public information or favorable conditions obtained during the work to seek personal interests or the benefits for the employer or other

parties;

- (3) Shall not use the name of governmental legal counsel to participate in profit-making activities unrelated to the work duties as the governmental legal counsel;
- (4) Shall not accept the attorney of other parties to handle legal affairs where the employer has an interest. When the governmental legal counsel has an interest in the business undertaken, which may affect the fair performance of duties, the governmental legal counsel shall apply for disqualification;
- (5) Shall not, without authorization, disclose the comments on the handling of governmental affairs known during the performance of duties;
- (6) Shall abide by the provisions of relevant laws, regulations, rules and other obligations agreed with the employer.

Article 15 The employed governmental legal counsel may provide legal opinions orally or in writing, and shall be responsible for the legal opinions provided.

Where the employer requires a Legal Opinion, the employed governmental legal counsel shall issue a legal opinion, with his/her name being signed (for the lawyer, the official seal of the law firm he/she works in shall also be affixed).

Article 16 Where the matters submitted by a government sector/agency or sub-district office to the district government for instructions involve important reforms, major government investments, formulation/adjustment of legal plans, legal affairs or the conclusion of agreements in the name of the district government, such matters shall go through the legality review of the legal counseling department concerned in advance, and the legality review comments shall be attached or written in the application for instructions; when conducting the legality review, the employed governmental legal counsels shall be consulted, and the Legal Opinion issued by the employed governmental legal counsels shall be attached as well. Where the formulation of normative documents is involved, the procedures for handling normative documents shall be followed.

When a document involving state secrets is to be consulted with the governmental legal counsel due to work needs, it shall be approved by the head of the employer.

Article 17 When handling administrative reconsideration, litigation, arbitration or other legal affairs, if a governmental legal counsel appears in court as the attorney, the corresponding government staff shall also appear in court.

When handling the entrustment procedures, it is necessary to specify the scope, time limit and content of entrustment. And the entrustment shall automatically terminate upon the completion of the entrusted matters.

Article 18 For employing a lawyer as a governmental legal counsel, the employer shall sign a written contract with the law firm providing governmental legal counseling services. The contract shall include the lawyer's scope of work, work method, employment period, contract termination, fee payment, rights and obligations, liability for breach of contract, dispute resolution, etc.

Article 19 Before employing governmental legal counsels, all subdistrict offices and government sectors/agencies shall submit the written documents of the proposed law firms, lawyers, experts and other related documents to the district judicial authority to seek its advice.

Article 20 The employer shall terminate the employment relationship with the employed governmental legal counsel in any of the following cases during the employment period:

- (1) Violating Article 14 herein;
- (2) Unable to work as a governmental legal counsel due to physical reasons;
- (3) Failing to attend the working meeting of governmental legal counsels for more than twice or failing to provide legal advice on time without justified reasons;
- (4) Being punished by the employer, the judicial authority or the bar associations;
- (5) Being investigated for criminal responsibility according to law;
- (6) Being dealt with according to law and discipline due to dereliction of duty and malpractice for personal gains;
- (7) Other reasons the employer believes the employed governmental legal counsel is not suitable to work as a governmental legal counsel.

Article 21 After signing a governmental legal counseling service contract, a subdistrict office or government sector/agency shall send a copy of the official text of the contract to the district judicial authority within 7 working days.

During the employment period, if both parties agree to terminate the governmental legal counsel service contract in advance through negotiation, the employer shall notify the district judicial authority of the termination in writing within 7 working days after the termination of the contract.

Article 22 Each subdistrict office or government sector/agency shall establish the working files of governmental legal counsels, and timely number, register and file the following documents obtained when employing governmental legal counsels:

- (1) Documents on the process of selecting law firms to provide governmental legal counseling services;
- (2) The official text of the governmental legal counsel service contract;
- (3) Records and relevant materials of provided services signed by the governmental legal counsels;
- (4) Other documents related to the governmental legal counsels.

Article 23 Where an employed governmental legal counsel violates these Rules during the employment period causing major economic losses or adverse social effects to the district government, the government sectors/agencies thereof and sub-district offices, the employer shall have the right to investigate the legal responsibility according to law.

For the aforesaid investigation (if any), a copy shall be sent to the district judicial authority in time.

Article 24 For a subdistrict office or government sector/agency that fails to seek advice from the governmental legal counsel as required, fails to invite the governmental legal counsel to participate in as required or fails to adopt the advice of the governmental legal counsel that should be adopted resulting in heavy losses or serious adverse effects, the head of the employer, other responsible leaders and relevant responsible persons shall be investigated for responsibility according to law.

Article 25 Each subdistrict office or government sector/agency shall establish an assessment mechanism for the employed governmental legal counsels, conduct an annual assessment of their work ability and performance, and take the assessment results as the basis for renewal of employment.

Article 26 Each subdistrict office or government sector/agency shall establish a mature management mechanism on governmental legal counsels. And the district government shall include the work of governmental legal counsels into the scope of evaluation of the construction of the law-based government.

Article 27 Where a subdistrict office or government sector/agency has employed governmental legal counsels before the implementation of these Rules and is still in the service period of the contract, the contract shall continue to be performed, and these Rules shall apply after the expiration of the contract.

Article 28 These Rules shall come in force on the date of release, and shall remain valid for 5 years. When the relevant legal basis changes or the validity period expires, evaluation and amendment will be made to meet the actual conditions.

Disclosure method: Active disclosure

Released by the Integrated Division I of the General Office of Haizhu District People's Government
on July 14, 2022
