

立法會
Legislative Council

LC Paper No. CMI/6/05-06

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Committee on Members' Interests

**Minutes of the fourth meeting
held on Thursday 29 September 2005 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG
- Clerk in attendance** : Mrs Betty LEUNG
Chief Council Secretary (3)1
- Staff in attendance** : Mr Ricky FUNG, JP
Secretary General
- Mr Jimmy MA, JP
Legal Adviser
- Mr Ray CHAN
Assistant Secretary General 3
- Mr Watson CHAN
Head (Research and Library Services)
- Ms Connie FUNG
Assistant Legal Adviser 3
- Mr Thomas WONG
Research Officer 4
- Mr Arthur LEUNG
Senior Council Secretary (3)1
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I. Confirmation of the Minutes of the last meeting held on 27 June 2005
(LC Paper No. CMI/134/04-05)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 27 June 2005 were confirmed.

II. Review of 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" and the registration requirements for remunerated directorships
(LC Paper No. CMI/143/04-05)

2. The Chairman recapped that at the last meeting, the Committee had deliberated the amendments proposed by the Legislative Council (LegCo) Secretariat to 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 Mr Albert CHENG's proposal to tighten up the registration requirement for remunerated directorships by requiring Members to register:

- (a) the amount of any income derived from remunerated directorships; and
- (b) the names of the parent companies of the companies in which they held remunerated directorships.

As members had different views on the proposed amendments to the Advisory Guidelines and Mr Albert CHENG's proposal, and four of the seven members of the Committee were not present, the meeting had decided that the views of all Committee members be sought by circulation. Members had also been requested to consult the LegCo Members of their respective political groupings about these proposals before they replied. Members' subsequent replies were summarized in LC Paper No. CMI/143/04-05. The Chairman then invited members to express their views.

The proposal to tighten up the registration requirements for remunerated directorships

3. Noting that LegCo Members were not required to register the amount of remuneration derived from employment or trade, the Deputy Chairman enquired if there would be any problem, from a legal point of view, in requiring Members to register the amount of remuneration derived from directorships. Legal Adviser (LA) replied that the registration system for

Members' interests was not based on any statutory provisions. Other than such agreements containing confidentiality clauses that Members might have entered into when they took up directorships, he was not aware of any other legal difficulties that might arise from such a requirement. However, the Committee might also wish to consider how a proper balance should be struck between the transparency of Members' interests and their privacy.

4. Mr LI Kwok-ying said that while the LegCo Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong were agreeable to the second point (point (b) in para. 2 above) of Mr Albert CHENG's proposal, they were opposed to the first point (point (a) in para. 2 above). These Members did not consider that the disclosure of the information on the amount of remuneration derived from directorships was crucial enough to warrant the intrusion into Members' privacy. He had talked to Sir Philip MAWER, the Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom (UK), at a workshop which he had attended, and learnt that Members of the UK Parliament were required to register any pecuniary interests or other material benefits they received which might be reasonably thought by others to have an influence on their conduct as Members of Parliament (MPs), and they were required to indicate whether or not the amount of remuneration derived from directorships had exceeded a certain sum. Mr LI said that the Committee might consider adopting such an approach.

5. Ms Emily LAU said that, for the sake of increased transparency, Members should be required to register the amount of remuneration derived from directorships. However, if that could not be achieved for the time being, she would support Mr LI's suggestion, which she considered as a step forward.

6. Mr Albert CHENG said that at present, listed companies were required to disclose the range of remuneration they paid to their directors. To enhance transparency, the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited were considering requiring listed companies to disclose the exact amount of remuneration paid to each director. He considered that requiring LegCo Members to register the amount of remuneration derived from directorships would enable members of the public to judge if the interests concerned were so substantial that they might influence the conduct of Members in their capacity as such.

7. Mr Alan LEONG said that LegCo Members belonging to Article 45 Concern Group supported Mr Albert CHENG's proposal. He enquired about the rationale for the House of Commons of the UK Parliament in requiring their members to indicate whether the amount of remuneration derived from such directorships had exceeded a certain sum or not. Referring also to LC Paper No. IN36/04-05, issued to members for the last meeting, he also asked about the rationale for the House of Commons of the Parliament of

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Canada to require the registration of any such remuneration derived during the preceding 12 months as well as any remuneration MPs expected to derive during the next 12 months. The Chairman also enquired when the United States (US) House of Representatives prohibited the taking up of any directorship. Research Officer 4 undertook to conduct research on these issues.

LA, clerk

8. As members unanimously signified support for the second point of Mr Albert CHENG's proposal, i.e. to require Members to register the names of the parent companies of the companies in which they held remunerated directorships, the Deputy Chairman proposed that the Committee proceeded to consider its implementation details. Mr Albert CHENG and Ms Emily LAU concurred. The Secretariat would prepare draft amendments to Rule 83 of the Rules of Procedure (RoP) and the Registration Form on Members' Interests for the Committee to consider at the next meeting.

Proposed amendments to the Advisory Guidelines

9. As members had unanimously agreed to the proposed new paragraph II(8), which stipulated that a Member should ensure that the personal information (e.g. qualifications) he provided to the Council was correct and true, the Deputy Chairman proposed that it be incorporated in the Advisory Guidelines. Secretary General (SG) pointed out that the Advisory Guidelines were issued by the Committee pursuant to Rule 73(1)(d) of RoP. On the drafting of the paragraph, LA invited Members to consider if the LegCo Secretariat should be mentioned as well. Assistant Secretary General 3 (ASG3) added that Members were requested to provide the LegCo Secretariat with personal information for the compilation of Members' biographies and uploading onto the LegCo web-site. Ms Emily LAU said that Members should ensure that the personal information they provided to any recipient was correct and true. Hence, she considered that the ambit of the paragraph should be expanded to cover all recipients, including the media. It would fall short of the expectations of the public if different standards were applied to the information Members provided to the Council and to others. The Deputy Chairman said that in other contexts, there were laws governing the provision of incorrect information in most cases.

LA, clerk

10. The Deputy Chairman said that members might need to conduct another round of consultation with Members of their respective political groupings if there were substantial changes to the paragraph. Mr Alan LEONG said that he had no strong views about the wording of the new paragraph in its present form, but he would appreciate it if LA would propose any technical amendments. The Chairman then concluded that the paragraph should be amended to cover all information provided to the Council and the Secretariat, and she instructed the Secretariat to follow up.

III. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims

(LC Papers No. IN39/04-05 and LS114/04-05)

11. The Chairman said that at the last meeting, the Committee had agreed in principle to take up the additional duty of handling complaints concerning operating expenses reimbursement (OER) claims. She invited members to note the following rules in RoP, which enabled the Committee's handling of complaints concerning registration and declaration of Members' interests:

- (a) Rule 73(1)(c) – empowering the Committee to handle complaints made in relation to registration and declaration of Members' interests;
- (b) Rules 83, 83A and 84 – stipulating that Members should register and declare certain interests; and
- (c) Rules 85 and 73(1)(e) – setting out the sanctions for Members found to have failed to register or declare their interests and empowering the Committee to make a report and recommend sanctions to the Council respectively.

She then invited members to consider LC Paper No. LS114/04-05, prepared by the Legal Service Division for the purpose of assisting members in considering how the expansion of duty should be set out in RoP. Its attachment contained some draft rules which were drafted along the lines of the above quoted rules.

12. Ms Emily LAU enquired whether the proposed rules would empower the Committee to deal with all complaints relating to OER claims. LA replied that the proposed rules were drawn up in accordance with the following recommendations of the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims, which had been endorsed by the House Committee on 17 June 2005:

- (a) a mechanism for handling complaints and allegations concerning Members' OER claims should be established;
- (b) the scope of the mechanism should be confined to Members' OER claims; and
- (c) the existing terms of reference of the Committee should be expanded so that it might also handle complaints and allegations concerning Members' OER claims.

13. LA then briefed members of the proposed rules. The proposed new Rule 83B would impose an obligation on Members to ensure that their OER claims were made in compliance with the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council (Guide). The proposed new Rule 73(1)(ca) would empower the Committee to consider and investigate any complaint alleging a Member's had breached the Guide. The proposed new Rule 85A would stipulate the available sanctions for Members who were found to have breached the obligations proposed under Rule 83B. The proposed revised Rule 73(1)(e) would empower the Committee to make relevant reports and recommendations on the sanction to the Council. This drafting approach had placed failure to comply with the provisions of the Guide as a basis for dealing with complaints about OER claims. He reminded members that there could be other drafting approaches.

14. Ms Emily LAU enquired about the legal status of the Guide and if the Committee could consider and investigate complaints relating to OER claims which Members had made before the establishment of the mechanism. LA replied that the Guide was drawn up by the Secretariat with the intention of assisting Members in making OER claims. Members had to follow the Guide in order to get reimbursed of operating expenses. The Guide was not drawn up under the authority of any legal provisions or RoP. Some of the provisions in the Guide might be considered mandatory while some were advisory in nature. In addition, Members had to sign declaration forms when lodging OER claims, which might carry legal consequences. SG said that the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement chaired by Hon Patrick Lau Sau-shing had recently completed deliberation on the recommendations of the Independent Commission Against Corruption with respect to the provisions in the Guide, and accepted some of the recommendations. The revised Guide had been issued to Members on 26 September 2005.

15. On Ms Emily LAU's second question, LA said that according to the general principle of fairness, a mechanism for handling complaints should not be applied retrospectively to acts done before its establishment. Nevertheless, there was always the provision of Article 79(7) of the Basic Law, which provided for censure of Members for misbehaviours, and abusive OER claims could be regarded as misbehaviours.

16. Ms Emily LAU commented that it would be unacceptable if the Committee could not deal with a complaint against a Member only because the guideline he/she had breached was advisory in nature. SG responded that the allegations about OER claims received so far had been concerned with Members providing false information in their claims. The Deputy Chairman said that criminal proceedings might be brought against Members for making fraudulent claims. Ms Emily LAU responded that it required a very high threshold of

evidence for the initiation of criminal proceedings. She considered that a mechanism within the Council for dealing with complaints would be necessary to deal with cases which did not meet the threshold.

SG

17. ASG3 pointed out that the Guide was used as the central theme in the drafting of the proposed rules. He suggested that members might consider an alternative approach of using the Guide as a reference only when the Committee dealt with all complaints relating to OER claims. There might be cases which were not covered by the Guide. SG said that he would review the Guide. Ms Emily LAU stressed that the mechanism for handling complaints about OER claims should be as comprehensive as possible to cover all types of cases. Mr Alan LEONG said that the Guide provided guidance for Members to follow when making OER claims, and he had no objection to the current drafting approach. LA suggested that members might wish to examine the provisions in the Guide in detail at future meetings. Members agreed.

18. Mr Albert CHENG said that the Committee might not have jurisdiction to amend the Guide. Mr Alan LEONG said that the Committee might need to wait for a further revision of the Guide. Mr LI Kwok-ying said that the Committee should examine the Guide in detail before adopting it as a central theme for dealing with complaints relating to OER claims.

clerk

19. Ms Emily LAU proposed that the paper on the handling of previous complaints about OER claims, which had been prepared by the Secretariat for the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims, be made available to members for information. Members agreed.

Procedure for handling complaints relating to OER claims

20. Ms Emily LAU said that the Committee would need to decide whether a separate procedure should be drawn up for handling complaints relating to OER claims. She asked if there was a need for that procedure to be provided in RoP. LA replied that the Committee had determined the procedure for handling complaints received in relation to the registration and declaration of Members' interests under Rule 73(7) of RoP, and that procedure might be used as a reference when determining the procedure for handling complaints relating to OER claims. Ms Emily LAU suggested that all Members should be consulted about the procedure before the Committee adopted it.

Sanctions for substantiated cases in selected overseas legislatures

21. The Chairman said that Mr Albert CHENG had suggested at the last meeting that the imposition of fines could be one of the sanctions. Head (Research and Library Services) then briefed members on his findings about such practice in selected overseas legislatures, as set out in LC Paper No. IN39/04-05. In UK, the House of Commons did not have the power to impose fines on Members who had breached the Code of Conduct for MPs. In 1999, there was a recommendation made by the Joint Committee on Parliamentary Privilege that the House of Commons should have the power to impose fines. However, no follow-up action had been taken so far. The House might impose the following sanctions: apology, withholding of salary, suspension and expulsion. Under the US Constitution, the House of Representatives had the power to impose fines on Members. The imposition of fines on Members was exercised infrequently - the last known case occurred in 1969. In Australia, the House of Representatives had the power to impose fines on Members, but such power only applied to substantiated cases involving breach of privilege or contempt, and not abusive claims of public funds. In Canada, the House of Commons had no power to impose fines on its Members. SG added that the Parliamentary Commissioner for Standards of the House of Commons in UK had told him that MPs might have their salaries withheld for a period of up to three months, and such a sanction amounted in effect to the imposition of a fine. The Committee noted the paper.

IV Date of next meeting

- clerk 22. The clerk would consult members regarding the date of the next meeting.
23. The meeting ended at 4:16 pm.