

Ref: AM 12/01/19

**Subcommittee on Members' Remuneration and
Operating Expenses Reimbursement (Subcommittee)**

Objective bases for Members' claims for shared operating expenses

Purpose

This paper invites members to consider the feasibility of requiring Legislative Council (LegCo) Members to justify their reimbursement claims for shared expenses according to certain verifiable objective bases.

Background

2. On the recommendation of the Independent Commission Against Corruption (ICAC), a compliance audit system was established in October 2006 to ensure that Members' operating expenses claims are in compliance with the provisions on conflict of interest and declaration of interest stipulated in the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council (Reimbursement Guide).

3. Following the completion of the first compliance audit report for the reimbursement year ended 30 September 2007, the appointed auditor PKF made a recommendation, among others, for Members' consideration, which is set out in paragraph 4 below.

Compliance auditor's recommendation

4. The compliance auditor pointed out that, where a Member shared his/her operating expenses between his/her LegCo business and private business, the sharing ratio was sometimes based on the Member's estimation. The auditor recommended that objective sharing bases, verifiable to some extent, should be used. For example, for sharing of staff, it should be based on the staff's time sheets or time logs; and for sharing of office, it should be based on the floor plan.

Reimbursement Guide

5. The relevant paragraphs on sharing of expenses in the Reimbursement Guide are as follows:

“Employment of Staff

13. A Member should recruit his/her staff based on merit, preferably by open recruitment, declare any conflict of interest...
15. Intermingling of LegCo and non-LegCo business in the duties of a staff member should be avoided as far as practicable. If LegCo and non-LegCo business cannot be clearly separated and accounted for, the following arrangements should be adopted:
 - (a) declare in the employment contract whether the staff member is also in the employ of the Member’s business or in the employ of the Member’s relatives, business associates or affiliated organizations (including but not limited to the Member’s employer, political party and constituency association), and the capacity in which this staff member is to be employed at the Member’s office;
 - (b) detail the duties involved and the percentage of work that is related to LegCo business;
 - (c) make available a copy of the employment contract for public inspection (personal identifiers and data may be blocked out if necessary); and
 - (d) certify on the reimbursement claim form (Form A) that the staff member has performed the duties as detailed in the employment contract.

Office Accommodation Expenses

29. A Member should avoid leasing his/her district office from his/her business associates or affiliated organizations (including but not limited to the Member’s employer, political party and constituency association) as far as practicable.

30. Should a Member consider it appropriate to lease office accommodation from the parties mentioned in paragraph 29 above, having regard to his/her constituents’ interest or the public interest, the Member must disclose his/her relationship with the landlord, provide justifications for leasing the property and obtain independent valuation of the market rental from a qualified property valuer. Declaration

Form II should be submitted for this purpose when reimbursement for the rental concerned is claimed for the first time.

31. If a Member shares office accommodation with another person who is not using the office for LegCo business, a layout plan with measurements delineating the areas used by the respective occupants and the common areas of the office should be submitted to the Secretariat. The reimbursable rental should normally be in proportion to the area used, unless some other justifiable factors exist. Declaration Form III should be submitted for this purpose when reimbursement for the rental concerned is claimed for the first time.

Shared Expenses

77. Only expenses (e.g. sharing of telephone lines, computer systems, photocopiers and electricity) that are individually identifiable, clearly separable from private purposes and wholly attributable to LegCo business may be claimed.

78., if an expense referred to in paragraph 77 above is incurred jointly with other parties or in a Member's other capacities, the Member must certify that the amount claimed is no more than the fair portion related to LegCo business and it has not been or will not be reimbursed from any other sources. The basis of sharing should be indicated."

Report of the Subcommittee to the House Committee

6. The reimbursement guidelines quoted in paragraph 5 above are based on ICAC's recommendations and Members' views made in 2005.

Main thrust of ICAC's recommendations

7. Against a backdrop of allegations and public concern that LegCo funds could be misused for possible personal gain, ICAC took the view that a clear delineation of LegCo resources vis-à-vis Members' resources would be the best way to demonstrate that Members were reimbursed only for activities related to their LegCo duties.

Members' views

8. For the efficient and economical use of resources, as well as for administrative convenience, intermingling the services of staff and sharing of office accommodation between LegCo and private business was a pragmatic approach, especially in the case of Members returned from functional

constituencies, who had to maintain substantial connection with the business or trade sector they represented.

9. For enhancement of transparency and accountability, Members were willing to declare interest and provide additional information on transactions with parties associated with them, such as information on the office space demarcated for LegCo business and the percentage of an employee's work which was LegCo-related.

10. The third report of the Subcommittee, which was endorsed by the House Committee, set out the views of Members and ICAC in greater detail. The parts on employment of staff, leasing of office accommodation and sharing of expenses are extracted in the **Appendix**. There was no discussion on the keeping of time sheets or time logs in cases where staff members were employed in both LegCo and private business.

Advice sought

11. Members are invited to consider the feasibility of implementing the compliance auditor's recommendation in paragraph 4 above.

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Ref: AM 12/01/19

**Extract from the paper for the House Committee Meeting
on 8 July 2005**

**Third Report
of the Subcommittee on Members' Remuneration
and Operating Expenses Reimbursement**

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Office accommodation

12. The majority of Members accept ICAC's recommendation that "Members should not claim reimbursement to lease office accommodation in which he or his relative has any financial interest". However, some Members are concerned that this is unfair to a Member who, for administrative convenience, subleases part of his private office for LegCo duties. So long as he declares interest, provides justifications, obtains independent valuation of the market rental and clearly demarcates the Member's office, he should be allowed to claim reimbursement to lease office accommodation in which he or his relative has any financial interest. If the whole arrangement is transparent and subject to audit, the Member concerned cannot benefit from the leasing.

13. ICAC explains that its recommendation is to avoid public perception that a Member subleases a part of his private office in order to subsidise his own private operations.

Recruitment of staff

14. ICAC recommends that "a Member should recruit his staff based on merits, preferably with open recruitment and declare any conflict of interest, ensure that the total remuneration offered commensurate with the candidate's skills, and document the selection process and decision. Documentation concerned should be deposited with the LegCo Secretariat to enhance transparency."

15. The Subcommittee generally supports this recommendation. To facilitate compliance with this recommendation, it proposes that the LegCo Secretariat should design a standard form for Members to provide information on the recruitment process and decision. However, the candidates' personal data should not be included in the form. The completed form should be deposited in the LegCo Secretariat.

Intermingling of private business and LegCo duties

16. The Subcommittee has strong reservations about ICAC's original recommendation that "intermingling of private and LegCo duties is undesirable; a Member should not claim reimbursement for using his private employees for LegCo work." The Subcommittee considers that there is a practical need for some Members (particularly those returned from functional constituencies (FC Members) who are required to have substantial connection with the constituencies they represent) to intermingle the services of some of their staff, e.g. secretaries, on private and LegCo duties. Moreover, there are practical difficulties and inconvenience, in some circumstances, to separate the services of these staff members on private and LegCo duties. It is noted that, in some cases, Members' companies or affiliated associations are actually subsidising their LegCo work by sharing a disproportionate amount of their assistants' remuneration, rather than the other way round. It is therefore impracticable and unreasonable to preclude such Members from claiming a part of the salary for those staff whose duties are partially on LegCo duties. This should be allowed, provided that the percentage of the work relating to LegCo business is clearly specified in the claims. Moreover, if Members were to separately employ staff for LegCo work solely for the purpose of compliance with ICAC's recommendation, this would not be efficient and economical use of resources. Additional resources would be required for implementing this recommendation, if the already inadequate OER provision is not to be further strained.

17. ICAC's response to the Subcommittee's views is that its review is undertaken against a backdrop of allegations and public concern that LegCo funds can be misused for possible personal gain. Hence, the objective of the review is to assist LegCo to put in place a credible reimbursement mechanism that would inspire public confidence. Given this paramount consideration, it considers that a clear delineation of LegCo resources vis-a-vis Members' private resources would be the best way to demonstrate that Members spent all the reimbursed amounts solely on activities related to their LegCo duties. As stated in its report, intermingling of these resources can easily give rise to allegations that a Member has used public funds to subsidise his private business. This consideration underscores the basis of its recommendations.

18. The Subcommittee reiterates some Members' difficulties and requests ICAC to consider alternative arrangements on this issue which are acceptable both to Members and the public. In response, ICAC proposes the following measures which would enhance transparency and accountability in the sharing of LegCo and private resources:

- (a) declare in the employment contract whether the staff member he proposes to hire is also in his private employ and the capacity in which the staff member is employed;
- (b) detail the duties involved and, if the staff member is also employed in the Member's private business, the percentage of work that is related to his LegCo business;

- (c) make available a copy of the employment contract for public inspection (personal identifiers and data may be blocked out if necessary); and
- (d) certify on the monthly reimbursement claim form that the staff member has performed the duties as detailed in the employment contract.

19. The majority of Members accept ICAC's alternative arrangements.

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Sharing of other office operation expenses

27. The Subcommittee generally has no objection to ICAC's recommendation that "only expenses (e.g. sharing of telephone lines, computer systems, photocopiers and electricity) that are individually identifiable, clearly separable from private purposes and wholly attributable to Council business may be claimed." However, some members of the Subcommittee express concern that, in order to comply with this requirement, a separate set of equipment may have to be acquired and placed in their small offices. All this causes much inconvenience to Members and further strains the already inadequate provision of OER for Members.

28. ICAC appreciates that such an approach in having separate staff and equipment for LegCo and private operations may cause Members some initial inconvenience and extra costs. However, it believes that this is a small price worth paying in order to maintain LegCo's long-term credibility, free from perception or allegations of financial impropriety (which often can arise from misunderstanding) in the reimbursement procedures. Hopefully, the initial inconvenience would be short-lived, as Members get used to the new arrangements, and the extra costs minimal.

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