

**Subcommittee on Members’ Remuneration and
Operating Expenses Reimbursement**

ICAC’s Review on “Rules and Practices for the Reimbursement of Members’ Operating Expenses”

Summary of ICAC’s Recommendations/Views and Members’ Views

ICAC’s Recommendations	Subcommittee’s Views	ICAC’s Views
<p>1. <u>Guiding Principles</u></p> <p>(a) LegCo should consider adopting the following guiding principles for its Members to observe in claiming expenses reimbursement:- (para 34 of ICAC Report)</p> <p>(i) a Member or his relative must not have any direct or indirect financial interest in, or be able to derive financial benefits from, any transaction against which reimbursement is claimed;</p> <p>(ii) a Member should refrain from any transactions from which he himself, his relative or close acquaintance/business associate may be perceived to have benefited;</p>	<p>Members express general support for most of ICAC’s recommendations.</p>	

ICAC's Recommendations	Subcommittee's Views	ICAC's Views
<p>(iii) a Member should use the reimbursement in an open, fair and accountable manner;</p> <p>(iv) if a conflict of interest cannot be avoided or has arisen, a Member should make a declaration which should be made available for public inspection;</p> <p>(v) should any conflict of interest become a matter of public concern, the Member should take steps to resolve the conflict in favour of the public interest;</p> <p>(vi) Members should separate their private and LegCo operations/interests as far as possible, and be seen to be doing so to avoid any perception of conflict of interest and personal benefit. (also paras 36-37, 41, 47 of ICAC Report)</p>		

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<p>2. <u>Office Accommodation</u></p> <p>(a) Members should not claim reimbursement to lease office accommodation in which he or his relative has any financial interest. (para 35 of ICAC Report)</p>	<p>Some Members are concerned that this recommendation will impose problem on those Members who arrange to sublease part of his private office for LegCo purposes and claimed expenses:</p> <p>(a) Sometimes it is only possible to lease a small office through subleasing. So long as the Member's office is clearly demarcated, the sharing ratio is fair and the whole arrangement is transparent and subject to audit, the Member concerned cannot benefit from the leasing.</p> <p>(b) There is no requirement that Members have to work full-time on LegCo business and that they have to sever their business and family links. As long as it is transparent, with full details about the leasing of offices owned by their relatives or themselves, the arrangement should be acceptable.</p>	<p>ICAC's recommendation is to avoid public perception that a Member subleases a part of his private office in order to subsidize his own private operations.</p>

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<p>(b) Should LegCo consider it appropriate for a Member to rent office accommodation from his affiliated association/political party having regard to his constituents' interest or public interest, the Member should declare interest, provide justifications and obtain independent valuation of the market rental. (para 39 of ICAC Report)</p>	<p>Sharing an office with his affiliated association/political party will be convenient for a Member, who may be its chairman dealing with LegCo matters as well as association/party matters almost simultaneously. Compliance with the three requirements (i.e. declaration of interests, provision of justifications and obtaining independent valuation of a clearly demarcated office) will suffice.</p>	<p>If LegCo Members have sufficient justifications that office-sharing is in the public interest, ICAC will not object. However, care should be taken to ensure that it will not give rise to any perception that the Member or his close associate may have any private interest from such an arrangement.</p>
<p>3. <u>Recruitment of Staff</u></p> <p>(a) 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. (para 40 of ICAC Report)</p>		

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<p>(b) Intermingling of private and LegCo duties is undesirable; it is therefore recommended that a Member should not claim reimbursement for using his private employees for LegCo work. (para 41 of ICAC Report)</p>	<p>Some Members are concerned about ICAC's recommendation that a Member should not claim reimbursement for using his private employees for LegCo work:</p> <p>(a) Members sometimes do not claim reimbursement for LegCo work performed by their private assistants.</p> <p>(b) In respect of "transfer of advantages", some Members' companies or affiliated associations are actually subsidizing their LegCo work by sharing a disproportionate amount of their assistants' remuneration, rather than the other way round.</p> <p>(c) In the case of FC Members, who are required to have substantial connection with the constituencies they represent, proving the fairness of the sharing ratio of an employee's service is difficult. It is not easy to determine whether or not interaction with a Member's constituents is LegCo-related.</p>	<p>ICAC's review seeks to enhance the credibility of the reimbursement procedures by minimizing the possibility of allegations or any perception of impropriety. Its view is that this can best be achieved by having Members' resources (including staffing) for LegCo work and private business clearly separated, and separately accounted for. It notes Members' concern that this may cause practical difficulty and inconvenience as they see merits and benefits in using their private business employees for LegCo work in respect of which the remuneration should be reimbursed.</p> <p>In considering any alternative arrangements to ICAC's original recommendation, increased transparency and accountability would be the key for any revised reimbursement procedures to gain public confidence. In this regard, the Subcommittee may wish to consider requiring a Member to:</p> <p>(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 to be employed;</p>

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	<p>(d) If sharing of staff are to be prohibited, some transitional arrangements should be allowed.</p> <p>(e) If sharing of staff/office is not allowed, extra financial support from the Administration will be necessary. Even then, the abundant data kept in trade associations and experienced staff working for the trade associations cannot be duplicated and kept in a Member's office. Sharing of resources is more efficient and cost effective. The system should be reasonable, sensible and acceptable to the public.</p> <p>(f) Enhanced transparency will be more practical.</p>	<p>(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;</p> <p>(c) make available a copy of the employment contract for public inspection (personal identifiers and data may be blocked out if necessary); and</p> <p>(d) certify on the monthly reimbursement claim form that the staff member has performed the duties as detailed in the employment contract.</p>

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<p>4. <u>Entertainment and Travelling Expenses (ETE)</u></p> <p>(a) LegCo should review the whole ETE arrangement. If the reimbursement arrangement is to be continued, then it should be made clear to the Members that the claims are accountable and Members should be reminded that they could only claim the exact amount of what they have actually expended. (para 44 of ICAC Report)</p>	<p>In accordance with the principles recommended by the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region (Independent Commission), the existing guidelines on Operating Expenses Reimbursements (OER) (including ETE) operate on an honour system. ETE used to be granted on a partially accountable basis (50% accountable and 50% non-accountable). Since 1 July 1999, the provision for ETE has been fully non-accountable on the recommendation of the Independent Commission.</p> <p>Members consider that ICAC's recommendation is a retrograde step. Moreover, it will be administratively very cumbersome, if not impossible in some cases, to obtain receipts and log down every meal and trip.</p>	<p>The key point of ICAC's recommendation is that LegCo should review the whole arrangement for such reimbursement, i.e. whether the expenses should continue to be on a reimbursement basis (in which case it is accountable) or whether the expenses should be made non-accountable in the form of a lump sum allowance, or as part of a Member's remuneration. If LegCo decides to continue with the present reimbursement mode, ICAC would encourage Members, as stated in its report, to retain receipts as far as practicable or at least keep a log of the expenses for their own protection in the event of an allegation that these claims are fraudulent in nature. ICAC understands that at present Members and their assistants do keep a record of the expenses in order to calculate the total amount of claim each month. Therefore ICAC's recommendation to keep receipts or a log should not give rise to extra administrative work. ICAC also understands that this is a common practice in the public sector.</p>

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<p>(b) Members should keep a log of their entertainment and travelling expenses and, where practicable, retain receipts issued for such expenses. (para 44 of ICAC Report)</p>		
<p>5. <u>Procurement</u></p> <p>(a) Members and their staff should not engage a contractor or supplier in which they have a financial interest; or companies owned/run by their relatives/close acquaintances; and if this cannot be avoided, they should declare interest and document the justifications for doing so (e.g. sole supplier, more competitive price from bulk purchase). (para 45 of ICAC Report)</p> <p>(b) LegCo should adopt procurement guidelines requiring Members to obtain quotations for purchases exceeding, say, \$5,000 to ensure value for money. (para 45 of ICAC Report)</p>		

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<p>(c) The Secretariat may consider assisting Members in co-ordinating and purchasing commonly used goods such as IT equipment on behalf of Members, e.g. using government's standing contracts. (para 46 of ICAC Report)</p>		
<p>6. <u>Sharing of Other Office Operation Expenses</u></p> <p>Only expenses that are individually identifiable, clearly separable from private purposes and wholly attributable to Council business may be claimed. (para 47 of ICAC Report)</p>	<p>Members generally support this recommendation. However, some express concern that a separate set of equipment, such as fax machines and photocopiers, may have to be acquired and placed in their small offices. Besides, sharing of a central telecommunication system will no longer be allowed according to ICAC's recommendation. All this causes much inconvenience to Members. Moreover, the extra costs involved will further strain the already inadequate provision of OER for Members.</p>	<p>ICAC appreciate 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, they believe 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 could 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.</p>

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<p>7. <u>Others</u></p> <p>(a) LegCo should provide practical examples of situations in which expenses are reimbursable or not reimbursable and in which conflict of interest should be avoided/declared; and revise the operating expenses reimbursement claim form to facilitate the declaration of conflict of interest. (para 48 of ICAC Report)</p> <p>(b) LegCo should draw up a Code of Conduct for staff employed by its Members, and organize training/briefings for them. (para 50 of ICAC Report)</p>	<p>Members welcome ICAC's offer to assist the LegCo Secretariat in drawing up a Code of Conduct and organizing training/briefings for their staff.</p>	

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<p>(c) LegCo should establish an audit capability in ensuring Members' compliance with the above principles and procedures when claiming their expenses reimbursement. (para 51 of ICAC Report)</p>	<p>(a) For transparency and credibility reasons, hiring of external professional auditors should be considered. The Secretariat does not have professional auditors on its establishment nor does it have sufficient manpower resources. ICAC should propose the content of the audit.</p> <p>(b) Additional financial resources should be sought from the Administration for the conduct of compliance audit for each Member.</p> <p>(c) Some spot checks will be acceptable, but too much "policing" or "patrolling" will cause inconvenience to Members. Public scrutiny and media monitoring are already very effective in providing the necessary safeguards against abuse.</p>	<p>The establishment of a mechanism for checking compliance is recommended, as practised in most organizations. The recommendation does not require every item of expenditure to be verified. Verification can be undertaken at random. Members will still be required to certify that their claims are in compliance with the Reimbursement Guide.</p> <p>Compliance audits does not mean "patrolling". The capability to check compliance should be part of every organization's internal control system, and the extent of the compliance audit should be determined by the organization concerned.</p>

Relevant paper

Minutes of meeting of the Subcommittee held on 1.3.05 (LC Paper No. AS 247/04-05).

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