

立法會
Legislative Council

LC Paper No. AS 149/04-05

Ref : AM 12/01/22 (Pt 3)

**Subcommittee to consider a mechanism for handling complaints and allegations
concerning Members' Operating Expenses Reimbursement claims**

**Minutes of meeting
held on Tuesday, 16 November 2004
at 4:30 pm in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Emily Lau Wai-hing, JP (Chairman)
Dr Hon Lui Ming-wah, JP
Hon Mrs Selina Chow Liang Shuk-ye, GBS, JP
Hon Howard Young, SBS, JP
Hon Abraham Shek Lai-him, JP
Hon Lee Wing-tat
Hon Li Kwok-ying, MH
Hon Alan Leong Kah-kit, SC
Hon Kwong Chi-kin
Hon Tam Heung-man
- Clerk in Attendance** : Mrs Anna Lo
Principal Council Secretary (Administration) (PCS(A))
- Staff in Attendance** : Mr Ricky C C Fung, JP
Secretary General (SG)
- Mr Y S Lee
Senior Assistant Legal Adviser 1 (SALA1)
- Mr Joseph Kwong
Accountant (ACCT)

**I. Confirmation of Minutes of the Last Meeting held on
1 November 2004**

(LC Paper No. AS 92/04-05)

The minutes of the last meeting held on 1 November 2004
were confirmed.

II. Relevant Papers

2. The Chairman referred members to the following papers relating to the subject under discussion issued in the second term of the Legislative Council (LegCo):

- Paper for the House Committee Meeting on 19 December 2003 on “Reimbursement of operating expenses for Members of the Legislative Council” (LC Paper No. AS 93/03-04)
- Extract from the minutes of the House Committee meeting on 18 June 2004
- Extract from the minutes of the House Committee meeting on 15 October 2004

III. Application for Late Membership

(Letter dated 8 November 2004 from Hon Alan Leong Kah-kit)

3. Members welcomed Mr Alan Leong to join the Subcommittee.

IV. Report of the “Subcommittee to consider a mechanism for handling complaints and allegations concerning Members’ Operating Expenses Reimbursement claims” (the Subcommittee) for the House Committee Meeting on 18 June 2004

(LC Paper No. AS 298/03-04)

4. At the request of the Chairman, PCS(A) briefed members on the recommendations of the Subcommittee in the second LegCo term. Briefly, the Subcommittee considered that, in order to uphold the reputation of LegCo and its Members, it was necessary to put in place a mechanism to handle complaints and allegations concerning Members’ operating expenses reimbursement (OER) claims. In dealing with such cases, it was recommended that deliberations should be open, fair and above party politics. Besides, a standing committee should be established for receiving such cases and activating the handling mechanism. Since the Committee on Members’ Interests (CMI), which was a standing committee, already had a set of procedures for handling complaints in relation to the registration and declaration of Members’ interests, including exercising the powers and privileges under the

Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to order the persons concerned to testify and give evidence, it was recommended that the scope of CMI be expanded to cover complaints and allegations concerning Members' OER claims. In case sanctions were considered necessary, the Subcommittee also recommended that sanctions similar to those stipulated under Rule 85 of the Rules of Procedure (RoP) in relation to Rule 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) could be adopted, where a Member might be admonished, reprimanded or suspended by LegCo on a motion to that effect.

5. PCS(A) also reported the response of Members of the second term to the Subcommittee's recommendations mentioned in the preceding paragraph. A total of 42 Members responded. Twenty-five of them supported the setting up of a mechanism to handle complaints and allegations concerning Members' OER claims. Ten proposed that the issue be considered by Members of the third LegCo term, 4 needed more time to consider the issue, 2 did not support and 1 had no comment. All the 25 Members in support of setting up a mechanism agreed with the proposal that CMI should be empowered to handle such cases.

6. In response to Mrs Selina Chow's remarks that not all Members of the second LegCo term had responded and that 22 Members had preferred hearings to be held in camera, the Chairman said that views of Members of the previous term were not binding on Members of this term. She invited members to consider whether fresh consultation among Members of the third LegCo term should be conducted.

7. Mr Lee Wing-tat enquired whether CMI's complaint handling procedure was a new one. SG replied that the procedure was formulated in July 1999. It had neither been modified nor activated since then.

(Post-meeting note: There were no similar procedures before July 1999.)

8. In reply to Mr Lee Wing-tat's further enquiry, SG said that CMI's complaint handling procedure in relation to the registration and declaration of Members' interests had been approved by CMI. The draft guidelines on the standards of conduct of LegCo Members drawn up by CMI in 1995, which was negated by LegCo at a motion debate, was a different issue.

9. Mr Alan Leong opined that CMI's complaint handling procedure was very limited in scope. It was appropriate only to deal with relatively simple complaints concerning Members' declaration of

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interests. For example, in case of any alleged non-declaration, CMI might confine itself to ascertaining whether the Member under complaint had acted intentionally or otherwise. He pointed out that the procedure did not mention whether a Member had the right of silence and right of legal representation. Grey areas such as these might give rise to judicial review. The Chairman responded that CMI's complaint handling procedure might have to be improved regardless of whether its scope would be expanded to cover allegations concerning Members' OER claims.

10. In reply to Mr Alan Leong, SG confirmed that the option of setting up an independent committee for handling allegations concerning Members' OER claims had been considered in the second LegCo term, with a view to avoiding Members investigating fellow Members. However, the option was not pursued because such a committee, made up of non-LegCo Members, could not be protected by the P&P Ordinance.

11. Mrs Selina Chow agreed that it was difficult for Members to investigate fellow Members. Some might feel that such investigations were politically motivated. Even a fact-finding investigation would eventually be required to make judgments, because the investigation report for the House Committee had to conclude whether an allegation was substantiated. The difficulty in defining political alliances also added to the difficulty of forming an investigation committee. To simplify the process of handling complaints, Mrs Chow accepted that instead of having a different mechanism, CMI could be requested to take up the additional role.

12. With reference to paragraph 81 of the minutes of the House Committee meeting held on 18 June 2004 (Appendix IV to LegCo Paper No. AS73/04-05), Mr Lee Wing-tat emphasized that the result of the consultation exercise conducted in the second LegCo term (see paragraph 5 above) indicated support from 25 Members only, which was not a majority consensus. Mrs Selina Chow also referred members to paragraph 86 of the said minutes and reiterated the Liberal Party's (LP's) stance that LP Members would respect the majority view of Members on the issue, but they had reservations in conducting investigations by fellow Members. She added that, unlike a country's parliament where there was a much greater number of members and some of them were widely respected for their non-partisan attitude, Hong Kong might find it difficult to have a committee with such degree of credibility.

13. Mr Kwong Chi-kin referred members to the fact sheet prepared by the Research and Library Services Division in December 2003 on "Mechanisms for regulating Members' use of allowances in

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selected legislatures” (Paper No. FS08/03-04 at Appendix II to LC Paper No. AS93/03-04). He noted that there were no common standards in the major common law countries over the issue. If the Member concerned remained silent, investigations would be difficult, especially if hearings were conducted in camera where public pressure might be less severe. He echoed the view that, due to the possible difficulty to define political alliances, it might not be easy to form an investigation committee with the exclusion of allies of the Member under complaint.

14. Mr Abraham Shek supported the complaint handling initiative. However, he too was concerned that it might be viewed as a kind of political censorship. He suggested that the possibility of appointing some independent persons to such committees be considered. The Chairman responded that the credibility of select committees and the Public Accounts Committee were reasonably good, even though they were made up of Members only; admittedly, such committees only enquired into issues concerning other organizations, not Members themselves.

15. Mr Lee Wing-tat suggested that experience of other countries where party politics were more mature, such as the United Kingdom and the United States, be obtained for reference. Case studies showing the entire complaint handling process and the operation of their committees would be very useful. Mr Howard Young added that such a study should reveal whether fellow party members were excluded from the investigation committee and how such committees ensure that investigations would not degenerate into mutual attack. SG said that a study would be conducted with particular attention to concerns raised by members.

Secretariat

16. SG explained the present role of the Secretariat in the handling of complaints against Members’ OER claims. He pointed out that the Secretariat had no power to investigate into allegations regarding Members’ OER claims. Nonetheless, it would seek clarification from the Members concerned when complaints were lodged with the Secretariat or allegations reported by the media. If the clarification satisfied the overriding principle that the expenses arose from Members’ LegCo duties, no further action would be taken. In the past, refunds had been obtained for reimbursements that should not have been made.

17. Miss Tam Heung-man floated the idea that, to ascertain whether claimed expenses had been incurred properly, professional auditors could be employed to audit Members’ OER claims. SG cautioned that auditors might not be in a position to determine whether an expense should be incurred and whether it should be claimed under the LegCo reimbursement system. Miss Tam elaborated that guidelines

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could be provided for the auditors for this purpose. She hoped that periodic independent audits, once every session or every term, would inspire confidence in the reimbursement system.

18. The Chairman remarked that members might also wish to consider granting similar inspection or auditing power that an external auditor might have to the Secretariat. Mrs Selina Chow had reservations about the Secretariat auditing Members' OER claims. Instead, she supported exploring Miss Tam's idea, because professional auditors might provide a more independent view.

19. Mrs Selina Chow further said that although she had earlier given her support to expand the role of CMI to cover the handling of complaints concerning Members' OER claims, on second thought, an ad hoc committee might be better because a complaint might be targeted at a member of CMI. In response, the Chairman pointed out that, according to paragraph 20 of the handling procedure, "no member of the Committee (i.e. CMI) shall participate as a member of the Committee in the handling of a complaint or in the meetings of the Committee to deliberate on or inquire into a complaint where the complaint was made by or against him".

20. To alleviate the concern that an investigation committee making up of Members alone might not be seen as fair, SG suggested that some independent observers could be appointed to report on whether the investigation committee had acted fairly. These observers would not take part in the deliberations, which would only be participated by Members protected under the P&P Ordinance. The role of these observers was just to observe how equitably Members conducted an investigation. The Chairman welcomed the suggestion and agreed that this could be explored, particularly the way the independent observers was to be appointed.

21. Quoting the Investigation Committee of the Hong Kong Institute of Certified Public Accountants as an example, Miss Tam Heung-man said that there were lay members on the Committee to ensure complaints were dealt with fairly. The Chairman responded that the Committee was a statutory body (governed by the Professional Accountants Ordinance), whereas in the case of LegCo, a committee made up of non-LegCo Members would not have the powers and privileges conferred by the P&P Ordinance.

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22. The Chairman concluded that —
- (a) members generally agreed that a mechanism for handling complaints concerning Members' OER claims should be set up;
 - (b) other legislatures' experience in this respect should be sought for reference; and Secretariat
 - (c) employment of auditors and other alternatives should be explored. Secretariat
23. The Chairman also invited members to consult their colleagues of respective political affiliations over the issues discussed. Members

Adjournment

24. The meeting ended at 5:35 pm.

Legislative Council Secretariat
January 2005