

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

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

Handling of complaints and allegations concerning Members' Operating Expenses Reimbursement claims

Purpose

This paper informs members on how the Legislative Council Secretariat (Secretariat) handles complaints and allegations concerning Members' Operating Expenses Reimbursement claims.

Background

2. On the instruction of the Chairman of the Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement claims, the Secretariat has prepared a paper on how the Secretariat handles complaints and allegations concerning LegCo Members' Operating Expenses Reimbursement claims, with particular reference to the recent cases widely reported by the media.

General principles in processing Members' Operating Expenses Reimbursement claims

3. For reimbursement of Members' operating expenses, the Secretariat has issued "A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" (the Guide). The Guide is based generally on the recommendations of the Independent Commission on Remuneration for the Members of the Executive Council and the Legislature of the HKSAR, which have been endorsed by the Executive Council and, in cases where financial implications are involved, approved by the Finance Committee of the Legislative Council (LegCo).

4. The Operating Expenses Reimbursement mechanism operates under an honour system, where Members' certification and explanation are accepted unless hard evidence indicates otherwise.

5. The Secretariat has no investigative power. It seeks clarification from Members, but does not carry out investigations or interrogate the Members concerned.

Handling of complaints and allegations

6. When a complaint or allegation against a Member regarding Operating Expenses Reimbursement is received or comes to the notice of the Secretariat, the Secretariat will check its reimbursement record and seek clarification from the Member concerned.

7. The Member's explanation will be considered by the Accountant, Principal Council Secretary (Administration) and Secretary General. In the event that notwithstanding the explanation, it is considered that an expense or part of the expense should not in fact have been reimbursed, the Member concerned will be requested to make an appropriate refund to the Secretariat. In judging whether an expense or part of the expense is reimbursable, the Secretariat makes reference to the principles and provisions stated in the Guide. When an item is not mentioned in the Guide or is not specifically prohibited, the principle for deciding whether the item is reimbursable is whether the expense has arisen out of a Member's LegCo duties.

Handling of recent allegations

8. Four allegation cases concerning six Members' Operating Expenses Reimbursements were widely reported by the media in the past year. A summary of the allegations reported, explanations sought and the Secretariat's comments on the cases are in the **Appendix** for members' information.

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Legislative Council Secretariat
January 2005

Case (1)

Allegations	Clarification sought from Members	Secretariat's comments
<p>Member A employed a female part-time personal assistant on flexible-working-hour terms.</p> <p><u>Allegations</u></p> <p>(a) the part-time assistant had common-law relationship with Member A and thus the provision in the Guide that a Member is not allowed to employ his or her relative (as defined in Appendix III of the Guide) had not been followed</p>	<p>Member A confirmed that, after a review carried out by a certified public accountant, all of his staff were employed in accordance with the Guide.</p>	<p>Member A employed the assistant since March 1997 with several consecutive contracts. The remuneration was based on the number of hours worked. Her duties were "solely related to the business of the Legislative Council, undertaking duties such as community and constituency members liaison activities, research and information gathering, secretarial/clerical work and any other duties assigned by" Member A. Her wages were \$110 per hour since July 2002 (\$55 per hour, from October 2000 to June 2002).</p> <p>Under the Guide in respect of employment of staff, no restriction is placed on salary adjustments, payment of bonuses and places of work.</p> <p>(a) Member A's explanation accepted.</p>

Allegations	Clarification sought from Members	Secretariat's comments
<p>(b) a computer was purchased in 1998 and delivered to the assistant's home</p> <p>(c) fluctuating remuneration; favourable salary adjustments and payment of bonus</p>		<p>(b) The invoice for the computer purchased in 1998 did not indicate that the computer was delivered to an address other than Member A's office. The Secretariat reimbursed the purchase based on information on the supporting documents and as declared on the claim form.</p> <p>(c) There is no restriction on salary adjustments and payment of discretionary bonuses, as Members may reward their staff on a performance basis.</p>

Case (2)

Allegations	Clarification sought from Members	Secretariat's comments
<p>Member B's district office, rented from a company partly owned by herself, shared the same floor in the office building with another company partly owned by her.</p> <p><u>Allegation</u></p> <p>Member B used her district office for running her commercial business</p>	<p>Member B explained that her staff had made a technical mistake of not properly allocating office expenses to the private company which had restarted its operation in November 2002 after a dormant period. Electricity and communication charges amounting to \$11,960.64 for the over-claimed period from November 2002 to September 2003 were subsequently refunded to the Secretariat.</p>	<p>Office expenses for telephone, fax, internet and electricity charges were fully claimed based on Member B's confirmation in August to October 2001 that the space occupied by the other company (co-tenant) was "vacant". Subsequent invoices were also certified for use on LegCo business.</p> <p>The type of expenses to be shared and the sharing basis are determined by Members under the honour system.</p>

Case (3)

Allegations	Clarification sought from Members	Secretariat's comments
<p>Member C rented a district office from a company partly owned by himself.</p> <p><u>Allegations</u></p> <p>(a) failure to declare shareholding in the company which owned the rented office</p> <p>(b) rental was higher than the market value</p>	<p>Member C submitted supplementary declaration in respect of the landlord company upon enquiry of the Secretariat.</p>	<p>Member C leased the property from June 1998 to July 2001 at a monthly rental of \$6,800. Under the Guide, no restriction is placed on the renting of property owned by a Member himself or by his political party.</p> <p>(a) The allegation regarding failure to declare interest is being considered by the Committee on Members' Interests.</p> <p>(b) The reimbursement system operates under an honour system, and Members are expected to ensure that rentals of their offices are reasonable. Moreover, the Secretariat does not have the expertise to assess whether rentals are at fair market value.</p>

Case (4)

Allegations	Clarification sought from Members	Secretariat's comments
<p>Members D, E and F rented a part of the office of their affiliated trade union (the trade union) as one of their district offices.</p>	<p>The Members confirmed that they jointly leased the office for receiving complaints from (particularly labour disputes) and providing assistance to the public.</p> <p>The area leased was about 1200 sq ft at a monthly rent of \$21,000, shared equally by each of the three Members.</p>	<p>Pooling of resources and division of labour amongst Members are allowed.</p>
<p><u>Allegations</u></p> <p>(a) The three Members had not visited/worked at the office</p>	<p>(a) Member F stated that there was a division of labour amongst the three Members. His main duty was more on liaison with trade unions. When complaint cases were referred to him from staff stationed at the office, he usually invited the complainants to meet him at the office provided by the Secretariat. He admitted that he had not visited the office concerned, and reiterated that he usually met the public at his other offices.</p> <p>Member E confirmed that he had used the office for receiving his electorate and trade union representatives.</p>	<p>(a) A Member is free to choose the venue for meeting the public.</p> <p>Since division of labour is allowed, there is no requirement that all three Members of the joint office must handle a case or a task together.</p>

Allegations	Clarification sought from Members	Secretariat's comments
<p>(b) no staff stationed at the office</p> <p>(c) the office was used by the trade union as classrooms for running courses on a fee-collecting basis</p>	<p>(b) All three Members confirmed that they had staff stationed at the office.</p> <p>(c) Member D advised that there was an oral agreement with the trade union that during daytime, the office was to be used as the Members' joint office, while after office hours, it could be used by the trade union to provide training courses for workers' continued education.</p> <p>The reasons for renting the office were:</p> <p>(i) It was situated in a building close to an industrial district. The office's wall-mounted signboard offered good publicity, as it could be seen by MTR passengers.</p> <p>(ii) The main function of the office was for receiving labour dispute cases, especially large-scale ones, because it could accommodate dozens of people. Such cases could arise at any time.</p>	<p>(b) Members' clarification accepted.</p> <p>(c) There is no requirement that an office cannot be shared with other organizations, either in terms of space-sharing or time-sharing.</p> <p>Members have the responsibility to determine how their resources should be used for fulfilling their LegCo duties.</p>

Allegations	Clarification sought from Members	Secretariat's comments
(d) majority of the staff of Member E did not actually work for him, but for the other two Members	(d) Member E confirmed that expenses of the joint office were shared by them, while staff employed by them could be jointly used by any of them on LegCo business. Although out of the nine staff members employed by him, only two usually worked with him, the other seven also supported him and the other two Members at different times in duties such as data collection and policy research. He also pointed out that the three Members had agreed that they might deploy the staff of the other two so long as this was for serving the public.	(d) "Pooling staff resources to gain the benefits of economies of scale" is allowed by the Independent Commission on Remuneration for the Members of the Executive Council and the Legislature of the HKSAR (Independent Commission), as long as LegCo Members "enter into individual employment contracts with each of their staff members". (para 16 of the Independent Commission's report in June 1995)