

**立法會**  
**Legislative Council**

LC Paper No. CMI/22/08-09

Ref: CB(3)/C/2(08-12)

**Committee on Members' Interests**

**Minutes of the second meeting  
held on Friday, 2 January 2009 at 10:45 am  
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)  
Hon Emily LAU Wai-hing, JP (Deputy Chairman)  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Sing-chi
- Members absent** : Hon WONG Yung-kan, SBS, JP  
Hon Paul CHAN Mo-po, MH, JP
- Other Members present on invitation** : Hon WONG Ting-kwong, BBS  
Hon CHEUNG Kwok-che  
Dr Hon PAN Pey-chyou
- Clerk in attendance** : Mr Arthur LEUNG  
Chief Council Secretary (3)1
- Staff in attendance** : Mrs Justina LAM  
Assistant Secretary General 3
- Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1
- Miss Lolita SHEK  
Senior Council Secretary (3)1

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Action

- I. Briefing on the draft advisory guidelines on matters of ethics in relation to the conduct of Members and the draft procedure of the Committee on Members' Interests for handling complaints received (LC Paper Nos. CMI/11/08-09 to CMI/13/08-09)**

The Chairman welcomed members and other Members to the meeting. She said that at the last meeting, the Committee on Members' Interests ("CMI") had considered the following two documents as adopted by CMI of the Third Legislative Council ("LegCo"):

- (a) "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
- (b) "Procedure for the Committee on Members' Interests for handling complaints received in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses ("the Procedure").

2. The Chairman further said that CMI had decided to seek Members' views on the documents before finalizing them. In this connection, the Clerk issued a circular (LC Paper No. CMI/11/08-09) to all Members on 10 December 2008 inviting them to forward their views on the documents to CMI on or before 12 January 2009 and attend this meeting. So far, the Secretariat had not received any written comment from Members.

#### Advisory Guidelines

3. On the invitation of the Chairman, the Clerk briefed members on the deliberations, as set out in the background brief prepared by the Secretariat (LC Paper No. CMI/12/08-09), of CMI of the previous and current terms of LegCo on the drawing up of a set of advisory guidelines on matters of ethics in relation to the conduct of Members in their capacity as such. As detailed in paragraph 28 of the paper, CMI agreed at the last meeting that the following amendments should be made to the draft Advisory Guidelines:

- (a) paragraphs (3), (4) and (7) be removed from the Advisory Guidelines; and
- (b) the headings of "General Standards" and "Specific Standards" be deleted, and the sub-paragraphs of paragraphs (1) and (6) be set out as separate paragraphs.

(The revised set of Advisory Guidelines was in Appendix III of LC Paper No. CMI/12/08-09.)

*Title of the Advisory Guidelines*

4. Ms Emily LAU said that she had discussed the draft Advisory Guidelines with some Members, who expressed the concern that the term "道德標準", i.e. the Chinese version of the term "ethics", in the title of the Advisory Guidelines might be misleading as the Advisory Guidelines only covered matters relating to "standards of conduct" and not "moral standards". They had suggested CMI to consider using the term "操守" as an alternative.

5. The Clerk said that the title of the Advisory Guidelines was based on the rule under which it was to be issued, i.e. Rule 73(1)(d) of the Rules of Procedure ("RoP"), which also used the Chinese term "道德標準". The Clerk further said that when the Chinese version of the Standing Orders ("SO") of the former LegCo was first available in April 1996, the term was already used in SO 60B(1)(d), which had the same wording as RoP 73(1)(d). Members might wish to consider amending RoP 73(1)(d) first before amending the title of the Advisory Guidelines.

6. Mr WONG Sing-chi and Mr Abraham SHEK preferred the use of the term "操守" to replace the term "道德". Mr WONG considered that it was an old usage to translate the term "ethics" as "道德標準" and a more modern translation was "操守".

7. Ms Emily LAU added that the proposed revision to the Chinese title of the Advisory Guidelines should not be construed as CMI no longer being concerned about Members' unethical conduct. She pointed out that paragraph 1 of the Advisory Guidelines provided that a Member should ensure that his conduct must not be such as to bring discredit upon LegCo.

8. Senior Assistant Legal Adviser 1 ("SALA1") said that in the Laws of Hong Kong, the usual Chinese rendition of the term "ethics" was "道德", e.g. the "Ethics Committee" established under the Medical Registration Ordinance (Cap. 161) was known as "道德事務委員會" in Chinese. SALA1 further said that rendition of a term depended on the context and in the context of the Advisory Guidelines, the use of "操守" as the Chinese version of the term "ethics" would not be inappropriate. SALA1 added that in view of Members' views, he would discuss with the Clerk after the meeting to see if a more appropriate Chinese rendition could be found.

SALA1,  
the Clerk

9. Members agreed that the Secretariat should recommend a more accurate term to replace the term "道德標準" for members' consideration. A paper should then be forwarded to the Committee on Rules of Procedure on the proposed amendment to RoP 73(1)(d). After the rule was amended by resolution of the Council, the title of the Advisory Guidelines would then be revised accordingly.

*Timing for issuance of the Advisory Guidelines*

10. Ms Emily LAU expressed concern that as it would take some time for the rule to be amended, there would be no Advisory Guidelines in the meantime. She asked whether the Advisory Guidelines in Appendix III of LC Paper No. CMI/12/08-09 could be issued to Members first while arrangements were being made to amend the rule concerned and the title of the Advisory Guidelines.

11. Mr Alan LEONG considered that as members had agreed to the content of the Advisory Guidelines, they should be issued without waiting for the amendment to the title. Mr LEONG added that when the Advisory Guidelines were issued, Members should be informed that CMI was considering to revise the title of the Advisory Guidelines.

12. SALA1 advised that as there could be doubts whether the Advisory Guidelines issued by CMI of the Third LegCo were still in force, it would be advisable for CMI to issue the Advisory Guidelines at this stage and issue a revised version should there be amendments afterwards.

13. Assistant Secretary General 3 ("ASG3") said that as the period for consultation on the draft Advisory Guidelines would end on 13 January 2009, members might wish to wait till then to see if other comments were received from Members. Members agreed that subject to any comment received, the Advisory Guidelines should be issued upon the expiry of the consultation period to all Members, and they should be informed that the title of the Advisory Guidelines might be revised subsequently.

the Clerk

(Post-meeting note: the Advisory Guidelines were issued to all Members under LC Paper No. CMI/17/08-09 on 13 January 2009.)

The Procedure

14. On the invitation of the Chairman, the Clerk briefed members on the deliberations, as set out in the background brief prepared by the Secretariat (LC Paper No. CMI/13/08-09), of CMI of the previous terms of LegCo on formulating a set of procedure for handling complaints it received. (The Procedure adopted by the Third LegCo was in Appendix III of the background brief.)

*Handling of anonymous complaints*

15. Referring to paragraph 1 of the Procedure, Ms Emily LAU pointed out that an anonymous complaint against a Member received by CMI would be circulated to members in the form of a confidential document for their information but CMI would not consider the complaint. She said that as anonymous complaints might contain serious allegations which might be found to be substantiated, it was unacceptable for CMI not to take further action on a complaint solely on grounds that it was made anonymously.

16. The Clerk said that CMI of the previous terms of LegCo had deliberated at great length the issue of whether CMI should handle anonymous complaints. CMI of the Third LegCo decided that anonymous complaints should be circulated to CMI members for information. Should any member consider that an anonymous complaint should be followed up, he could take up the case and lodge a complaint with CMI in his own name. In arriving at such a decision, CMI had taken into account the viewpoint that while a person who initiated a case without grounds in a court of law would have certain consequences for malicious prosecution or abuse of process, a person who lodged an anonymous complaint with CMI without grounds would bear no such consequences.

17. Ms Emily LAU pointed out that the arrangement for a CMI member to take up an anonymous complaint and lodge a complaint to CMI in his own name had not been set out clearly in the Procedure. The Clerk said that while the decision of not considering anonymous complaints had been reflected in paragraph 1 of the Procedure, the Procedure did not preclude any member of CMI from lodging a complaint in his own name.

18. The Clerk added that to ensure fairness, paragraph 25 of the Procedure stated that no CMI member would be allowed to participate in such capacity in the handling of a complaint or in CMI meetings to deliberate on or inquire into a complaint where the complaint was made by or against him. Ms Emily LAU queried why this was the case. SALA1 responded that the provision was consistent with the legal principle that a person should not at the same time act as the prosecutor and the adjudicating authority. The paragraph served as a safeguard against possible role conflict should a CMI member decide to take up an anonymous complaint and lodge a complaint in his own name.

19. Mr Alan LEONG pointed out that the second last sentence of paragraph 1 of the Procedure had set out the three types of complaints which CMI would not handle, namely, any complaint which was made by an anonymous or unidentifiable person or by a person who could not be contacted, or was made against a former Member, or was about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of

the complaint. Mr LEONG added that CMI of the previous terms of LegCo arrived at the decision not to handle such types of complaints after thorough deliberations and having regard to the mode of operation of CMI and resources available to it.

20. To address Ms Emily LAU's concern, Mr LEONG proposed that CMI could devise a mechanism whereby CMI could request the Secretariat to make initial enquiries in respect of the allegations made in an anonymous complaint if a certain number (e.g. four or more) of CMI members considered the allegations were of a serious nature and worth pursuing. It could be envisaged that in the process, persons who could act as a witness might naturally emerge. To this end, the last two sentences of paragraph 1 of the Procedure should be amended to the effect that while CMI would normally not consider anonymous complaints, it might decide otherwise when the circumstances so warranted.

21. The Clerk said that CMI of the Third LegCo decided, on the basis of various reasons, not to consider the three types of complaints referred to by Mr Alan LEONG, as set out in paragraphs 6 and 18 of the LC Papers No.CMI/13/08-09. Both Ms Emily LAU and Mr Alan LEONG considered that among the three types of complaints, only anonymous complaints should be considered by CMI under certain circumstances, whereas the other two types of complaints should still not be considered.

22. Mr CHEUNG Kwok-che said that under the existing arrangement, if a member considered an anonymous complaint worth pursuing, he had to lodge a complaint in his own name and he would then be disallowed to participate in the deliberations of the case as a member. He considered that this arrangement was unfair to the member concerned, and it should be the collective decision of CMI whether or not to follow up a particular complaint. He said that CMI might consider stipulating that the decision on whether to follow up a complaint required the agreement by a two-third majority of CMI members.

23. Mr Alan LEONG said that a CMI member taking up the case and lodging a complaint in his own name was only one of the ways to handle an anonymous complaint, and the Procedure did not provide that anonymous complaints were to be handled only in this way. In addition, other Members and any other person could lodge a complaint with CMI.

24. Ms Emily LAU enquired how the Secretariat handled complaints it received or press reports against Members. In response, ASG3 said that if the Secretariat received a complaint about a Member's operating expenses reimbursement ("OER") claims, the Accounts Office would seek clarification with the Member concerned. Anonymous complaints would also be handled in the same way.

25. Dr PAN Pey-chyou considered that CMI should define very clearly the types of anonymous complaints it would handle, and whether they should include complaints against Members' personal conduct. The Chairman pointed out that according to CMI's terms of reference, CMI would only handle complaints about the registration or declaration of interests of Members or their OER claims, and that matters concerning the moral conduct of Members would not be handled by CMI. Ms Emily LAU added that Members could be censured for misbehaviour under Article 79(7) of the Basic Law.

26. Ms Emily LAU said that the Secretariat should provide information on how it handled complaints made to it against Members and whether it would follow up allegations against Members in press reports. The Chairman requested the Secretariat to prepare a paper on how the Secretariat handled such complaints/allegations. Ms Emily LAU added that the Secretariat should also consider how the Procedure should be revised on the basis of the existing mechanism under which the Secretariat handled such complaints/allegations.

the Clerk

*Drafting of the second last sentence of paragraph 1 of the Procedure*

27. Dr PAN Pey-chyou pointed out that it was not clear from the Chinese version of paragraph 1 of the Procedure that there were three different types of complaints which CMI would not consider. He suggested that the word "或"(or) be added before the second type of complaints, i.e. "是針對前任議員的".

28. Mr Alan LEONG suggested that for clarity, the sentence could be amended by numbering the three types of complaints which CMI would not handle. Members agreed.

*Time limit for the decision on whether or not to hold a meeting*

29. Mr Alan LEONG pointed out that paragraph 1 of the Procedure provided that the Clerk should, upon receipt of a complaint, ask the Chairman to decide within two working days whether a meeting on the matter should be held. Since each complaint might have its unique circumstances and verification of the allegations of a complaint might take some time, CMI might review if there was a need to set such a rigid time limit for deciding whether or not to hold a meeting to consider a complaint.

*Cases of alleged misconduct of Members reported by the media*

30. Mr WONG Ting-kwong noted that the Procedure did not contain provisions on how cases of alleged misconduct of Members, which had been reported widely as the headlines of newspapers or by other media, but no complaint was received by CMI, should be handled.

31. Ms Emily LAU considered that a mechanism should be established under which members might request to hold meetings to consider such cases. A new paragraph should therefore be included in the Procedure for this purpose.

32. Regarding media reports on allegations against Members, Mr Alan LEONG said that the issue was whether and how CMI should monitor press reports e.g. whether gossip columns or hearsay should be considered. He pointed out that by taking follow up actions on press reports, CMI would assume a proactive role in monitoring Members, and thus deviate from the existing practice of acting only on complaints. CMI should fully deliberate the pros or cons for taking such an approach.

33. Mr WONG Ting-kwong said that he had not yet formed a view on the issue.

*The right of Members to be informed of the complaints against them*

34. Mr WONG Ting-kwong asked whether the Member under complaint would be informed that he was the subject of a complaint if CMI decided not to take follow up action on the complaint. The Clerk replied that this was not provided for in the Procedure. Mr Alan LEONG said that many professional bodies had adopted the practice of not informing the member concerned if the complaint was found to be unsubstantiated. He believed that some Members including himself did not wish to be informed.

35. Mr WONG Ting-kwong said that while he respected that some Members preferred not to be informed, some Members might wish to be informed, particularly when repeated ungrounded complaints had been made against them. Dr PAN Pey-chyou concurred with Mr WONG that it was a matter of right for the Member under complaint to know.

36. Ms Emily LAU agreed with Mr WONG Ting-kwong that it was fair that the Member under complaint should be informed of the complaints against him even though CMI would not follow up such complaints. She considered that a paragraph should be added to the Procedure to address the issue.



37. Mr Alan LEONG suggested that Members be consulted on this issue, and individual Members could give advance instructions to the Secretariat on whether they wished to be informed. Mr LEONG added that the Member under complaint would be informed immediately when CMI decided to conduct an investigation into the complaint.

38. Mr WONG Sing-chi said that it was not uncommon that groundless complaints were made against Members, and it was doubtful if it was necessary to inform the Members under complaint of each and every complaint which CMI decided not to follow up.

39. Members decided that the Procedure set out in Appendix III to LC Paper No. CMI/13/08-09 should be immediately adopted for use in handling complaints received by CMI. Ms Emily LAU suggested and members agreed that all Members should be invited to attend future deliberations of CMI on the Procedure.

LegCo  
Secretariat

40. Members agreed that subject to any comments received from Members, the Procedure should be issued upon expiry of the consultation period on 13 January 2009 to all Members for their information.

(Post-meeting note: the Procedure was issued to all Members under LC Paper No. CMI/17/08-09 on 13 January 2009.)

**II. Confirmation of minutes**  
(LC Paper No. CMI/14/08-09)

41. The minutes of the meeting held on 20 November 2008 were confirmed.

**III. Any other business**

42. There being no other business, the meeting ended at 12:20 pm.