

立法會
Legislative Council

LC Paper No. CMI/11/08-09

Ref : CB(3)/C/3

Tel : 2869 9160

Date : 10 December 2008

From : Clerk to Committee on Members' Interests

To : All Members of the Legislative Council

Committee on Members' Interests

**Invitation of Members' views on
the draft Advisory Guidelines and
the draft Procedure for handling complaints
and invitation for Members to attend a related briefing session**

At its first meeting on 20 November 2008, the Committee on Members' Interests (CMI) considered the following documents as adopted by CMI of the Third Legislative Council:

- "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
 - "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 or applications for advance of operating funds" (Procedure for handling complaints).
2. CMI decided that before finalizing the documents, Members' views should be sought, and they should be invited to attend a briefing session.
3. Background notes on the documents are set out in **Appendices I and II** respectively. The two versions of the Advisory Guidelines and Procedure for handling complaints which CMI is considering to adopt are in **Annex II** and

Annex to the appendices respectively. CMI members did not propose any amendment to the Procedure for handling complaints and they agreed to delete a few paragraphs from the Advisory Guidelines (see paragraph 6 of Appendix I).

4. The briefing session will be held at the beginning of second meeting of CMI, which has been scheduled for **Friday, 2 January 2009** at **10:45 am** in **Conference Room B** of Legislative Council Building.

5. Members are invited to complete the reply slip in **Appendix III** to express their views on the above documents, and return it to me on or before **Monday, 12 January 2009**. Members are also invited to complete the reply slip in **Appendix IV** to indicate if they will attend the briefing session, and return it on or before **Monday, 22 December 2008**.

(Arthur LEUNG)
Clerk to Committee on Members' Interests

Encl.

c.c. CMI members

Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)

Hon Emily LAU Wai-hing, JP (Deputy Chairman)

Hon WONG Yung-kan, SBS, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Alan LEONG Kah-kit, SC

Hon Paul CHAN Mo-po, MH, JP

Hon WONG Sing-chi

ASG3

SALA1

**Background notes on the draft 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**

Under Rule 73(1)(d) of the Rules of Procedure (RoP), one of the functions of the Committee on Members' Interests (CMI) is to "consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". Since 1996, it has been the practice of CMI to adopt a set of advisory guidelines on matters of ethics in relation to the conduct of Members in their capacity as such at the start of each legislative term and issue it to all Members for their reference.

2. The first set of Advisory Guidelines was issued to all Member in June 1996, after the Council negated the proposal of CMI in April 1996 to empower CMI to consider and investigate complaints about Members' misconduct. This was the second time the motion to provide CMI with such power was defeated in the Council. The first defeat was in July 1995. At that time, despite some Members' concern about the need to monitor the conduct of Members, there was no consensus among Members on whether a formal mechanism should be introduced to investigate Members for misconduct. Nevertheless, in the course of CMI's work, having regard to the practices of the legislatures in other places for monitoring the conduct of legislators, a set of guidelines was drawn up, setting out the general and specific standards of conduct expected of Members in dealing with Legislative Council (LegCo) business. Following the defeat of the motion in April 1996, CMI decided that this set of guidelines should be issued to Members for their reference. The guidelines, which were named as the "Advisory Guidelines", were intended for Members' reference only.

3. The Advisory Guidelines were refined in each subsequent LegCo term with textual amendments and issued to all Members at the start of the new term. In the 2004-2005 session, after deliberation on an e-mail message it received from a member of the public raising doubts about the academic standing of the educational qualifications claimed by a Member on the LegCo web site, CMI of the Third LegCo decided to revise the Advisory Guidelines by adding new paragraph (8). The new paragraph read "a Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true". The Advisory Guidelines adopted by CMI of the Third LegCo are in **Annex I**.

The scope of the Advisory Guidelines

4. The Advisory Guidelines only serve as a reference for Members. It is generally accepted by Members that it is difficult to define what “proper conduct” means. The Advisory Guidelines provide general standards on the conduct of Members, such as the principles on Members’ behaviours and factors to consider before engagement in commercial activities (paragraphs (1) and (2)). The Advisory Guidelines also set out specific standards on the declaration of pecuniary interest and registration of registrable interests (paragraphs (3) and (4)), on the principle that a Member should refrain from taking advantage of the capacity as a Member for furtherance of his private interest (paragraphs (5) and (6)), on the use of the Operating Expenses Reimbursement (OER) and District Office Allowance (paragraph (7)), and on the truthfulness of personal information provided to the Council (paragraph (8)).

Recent development

5. In June 2006, CMI completed a study on the establishment of a mechanism for handling complaints concerning Members’ OER claims or applications for advance of operating funds (fund-advance applications). At the Council meeting of 5 July 2006, RoP were amended to clearly set out the specific conduct expected of a Member in making OER claims or fund-advance applications (RoP 83AA), to empower CMI to consider and investigate any complaints concerning OER claims or fund-advance applications (RoP 73(1)(ca)), to require CMI to have regard, in handling complaints concerning OER claims or fund-advance applications, to the provisions of the guide for OER claims issued by the Secretariat (RoP 73(1A)), and to provide for sanctions of a Member who failed to comply with the rule on making OER claims or fund-advance applications (RoP 85). The “Procedure for Handling Complaints Received in Relation to the Registration and Declaration of Members’ Interests” (the Procedure for handling complaints) was also revised to include the handling of complaints concerning Members’ OER claims or fund-advance applications.

Deliberations of CMI of the current LegCo

6. At its first meeting on 20 November 2008, CMI agreed that the following amendments should be made to the draft Advisory Guidelines:

- (a) paragraphs (3) and (4) be removed from the Advisory Guidelines, since the substance of the two paragraphs has already been reflected in Rule 83 (Registration of interests), 83A (Personal Pecuniary Interest to be Disclosed) and 84(1) and (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) of the Rules of Procedure (RoP), and sanctions for failure to comply with any of

these rules are already provided in RoP 85. As such, the inclusion of the two paragraphs in the Advisory Guidelines may have the undesirable effect of misleading Members into thinking that the aforesaid rules are advisory in nature;

- (b) paragraph (7) be removed, as amendments had been made to RoP in 2006 setting out the specific conduct required of Members in making claims for reimbursement of the operating expenses or applications for advance of operating funds (RoP 83AA), empowering CMI to consider and investigate related complaints (RoP 73(1)(ca)) and providing for sanctions for failure to comply with RoP 83AA (RoP 85); and
- (c) the headings of “General Standards” and “Specific Standards” be deleted, and the sub-paragraphs under paragraphs (1) and (6) be set out as separate paragraphs.

7. The revised Advisory Guidelines are in **Annex II**. CMI also decided that before finalizing the document, the views of all Members should be sought, and they should be invited to attend a briefing session.

Council Business Division 3
Legislative Council Secretariat
10 December 2008

**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**

*(Issued by the Committee on Members' Interests under
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

I. General Standards

- (1) (a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
- (b) A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
- (2) A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.

II. Specific Standards

- (3) In accordance with Rules 83A, 84(1) and 84(1A) —

- (a) In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.
 - (b) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
 - (c) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
- (4) In accordance with Rule 83 and guidance notes issued by the Committee on Members' Interests, a Member shall register particulars of registrable interests listed below:—
- (a) remunerated directorships of companies, public or private;
 - (b) remunerated employments, offices, trades, professions or vocations;
 - (c) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the Council;
 - (d) (i) all donations, as a candidate in the Legislative Council election in which the Member was elected as a Member of the Council, received by the Member or any person on his behalf for the purpose of meeting the Member's election expenses in the election; or

- (ii) financial sponsorships, as a Member of the Council, by any person or organization, stating whether any such sponsorships include any payment or any material benefit or advantage to the Member or his spouse, whether direct or indirect;
 - (e) overseas visits made by the Member or his spouse relating to or arising out of membership of the Council where the cost of any such visit has not been wholly borne by the Member or public funds;
 - (f) any payments or any material benefits or advantages received by the Member or his spouse arising out of his membership of the Council from or on behalf of:
 - (i) any government or organization of a place outside Hong Kong; or
 - (ii) any person who is not a Hong Kong permanent resident;
 - (g) land and property;
 - (h) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.
- (5) A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
- (6) (a) A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.
- (b) A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.

- (7) A Member should not use any part of his Operating Expenses Reimbursement or District Office Allowance for purposes other than those in connection with the business of the Council.

- (8) A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

October 2005

**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**

*(Issued by the Committee on Members' Interests under
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
2. A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
3. A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.
4. A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
5. A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.

6. A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.
7. A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

December 2008

**Background notes on
the draft procedure of 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 or
applications for advance of operating funds**

Under Rule 73(1)(c) of the Rules of Procedure (RoP), one of the functions of the Committee on Members' Interests (CMI) is "to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint".

2. CMI of the First Legislative Council (LegCo) considered that although there was no complaint before it, a detailed procedure for handling complaints and conducting investigations in relation to the registration of Members' interests should be put in place, so as to ensure fairness to the Member under complaint and the complainant as well to guard against abuse or favoritism by a dominant party when CMI dealt with such complaints. After detailed deliberation and making reference to the practices and procedure for handling complaints about legislators in other legislatures, CMI made "The procedure of the Committee on Members' Interests for handling complaints received in relation to the registration and declaration of Members' interests" (the Procedure (1999 version)) and issued it to Members in August 1999.

3. The main features of the Procedure (1999 version) included:

- (a) CMI would only deal with written complaints in which the complainants could be contacted and identified;
- (b) a two-part approach was taken to decide whether a meeting should be held for the purpose of considering a complaint. The Chairman would first decide whether such a meeting should be held. He might decide not to hold such a meeting on grounds that the complaint was not related to the registration or declaration of a Member's interests, or that the complaint was merely based on speculations, inferences or unfounded judgements. The Chairman's decision of not holding such a meeting could be overturned by a majority of members;
- (c) at the preliminary consideration stage, CMI might invite the complainant to attend a meeting to provide information. CMI

might also invite the Member under complaint to attend the meeting to give explanations and to provide information. CMI would then decide whether to proceed with an investigation;

- (d) in the course of an investigation, CMI might invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person;
- (e) upon receipt of CMI's notification of its decision that the complaint was substantiated, the Member under complaint could request CMI to review its decision; and
- (f) if CMI was of the opinion that the complaint was substantiated (or in the case of a request for review, CMI was still of the opinion that the complaint was substantiated), it was required to present a report to the Council on the complaint and might also make a recommendation to the Council as to the sanction to be imposed under RoP 85.

4. CMI of the Second and Third LegCo adopted the same set of Procedure (i.e. the 1999 version) and issued it to Members at the beginning of the terms.

5. When CMI investigated, during the period from November 2004 to February 2005, the case of a Member's failure to register interests with the Clerk to LegCo pursuant to RoP 83, it had made reference to the Procedure (1999 version). In that case, CMI concluded that the Member had failed to comply with RoP 83, and recommended that the Member be sanctioned by admonishment on a motion to that effect. The admonishment motion was moved by the Chairman of CMI and was passed at the Council meeting on 7 April 2005.

Recent development

6. In June 2006, CMI completed a study on the establishment of a mechanism for handling complaints concerning Members' operating expenses reimbursement (OER) claims and applications for advance of operating funds (fund-advance applications). The study was conducted on the House Committee's request following public concern about the alleged misuse of OER by some Members. At the Council meeting of 5 July 2006, RoP were amended to clearly set out the specific conduct expected of a Member in making OER claims or fund-advance applications (RoP 83AA), to empower CMI to consider

and investigate any complaints concerning OER claims or fund-advance applications (RoP 73(1)(ca)), to require CMI to have regard, in handling complaints concerning OER claims or fund-advance applications, to the provisions of the guide for OER claims issued by the Secretariat (RoP 73(1A)), and to provide for sanctions of a Member who failed to comply with the rule on making OER claims or fund-advance applications (RoP 85).

7. CMI also revised the Procedure (1999 version) having regard to its new function of handling and investigating complaints concerning Members' OER claims or fund-advance applications. While retaining the main features highlighted in paragraph 3 above, CMI added the following new features to the Procedure, so as to enhance fairness to the Member under complaint as well as tighten up the confidentiality requirement:

- (a) CMI will not handle any complaint which is made against a former Member, or is about a Member's act(s) or omissions(s) which allegedly took place seven years or more prior to the date of the complaint. CMI considered that it was difficult to impose sanction on a former Member, and unreasonable to expect a serving Member to keep his papers, records and accounts for more than seven years;
- (b) in addition to the grounds mentioned in paragraph 3(b) above on which the Chairman of CMI may base his decision of not holding a meeting to consider a complaint, the Chairman may decide not to hold a meeting if the complaint involves substantially repeated allegations which have already been dealt with, except where fresh evidence has been produced;
- (c) CMI shall inform the Member under complaint, when inviting him to its meeting(s), that CMI may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before it and to give evidence or to produce documents, and may cause him to be examined on oath;
- (d) CMI may suspend its investigation if, during the course of doing so, it is learnt that the complaint or related matters is being investigated by a law enforcement agency, or related to a case pending in a court of law;
- (e) the Member under complaint may be accompanied by a maximum of three persons, including his legal advisor(s), for the purpose of giving him assistance or advice, but the Member must answer questions, give explanations or provide information himself; and

- (f) all members and other persons attending meetings of CMI held in camera shall be required to sign a confidentiality undertaking that they will not publish evidence taken before CMI, documents produced to it, or its deliberations and decisions before it has presented its report to LegCo; and before CMI informs the Member under complaint of its decision on whether or not the complaint is substantiated, the Member under complaint shall be required to sign a confidentiality undertaking that he will not publish any document marked as confidential by CMI before it has presented its report to LegCo.

8. The revised Procedure (2006 version), issued to all Members on 6 July 2006, is in the **Annex**.

Deliberations of CMI of the current LegCo

9. CMI considered the Procedure (2006 version) at its first meeting on 20 November 2008. CMI members did not propose any amendment to the Procedure but they decided that before finalizing the document, the views of all Members should be sought on it, and they should be invited to attend a briefing session to exchange views with members of CMI.

Council Business Division 3
Legislative Council Secretariat
10 December 2008

**THE PROCEDURE OF
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 OR
APPLICATIONS FOR ADVANCE OF OPERATING FUNDS**

July 2006

**The procedure of 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 or
applications for advance of operating funds**

Convening the first meeting

- (1) Upon receipt of a written complaint by the Committee on Members' Interests (the Committee) from a Member or a member of the public (hereinafter referred to as "the complainant) about the registration or declaration of interests of a Member or a Member's claims for reimbursement of operating expenses (hereinafter referred to as "the Member under complaint"), the Clerk to the Committee (the Clerk) shall forthwith contact and verify the identity of the complainant. The Clerk shall then distribute the complaint in the form of a confidential document to members of the Committee (members) and he shall ask the Chairman of the Committee (the Chairman) to decide within two working days whether a meeting on the matter should be held (in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, the Clerk shall seek instruction from the Deputy Chairman; the same principle shall apply in subsequent paragraphs). If a complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or is made against a former Member, or is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of the complaint, the Chairman shall instruct the Clerk to circulate the complaint to other members in the form of a confidential document for information. However, the Committee will not consider the complaint.
- (2) In deciding whether a meeting should be held to consider the complaint received, the Chairman may consider not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration or declaration of a Member's interests, or a Member's claims for reimbursement of operating expenses;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) the complaint involves substantially repeated allegations which have already been dealt with by the Committee, except where fresh evidence has been produced; or
 - (d) other reasons he deems appropriate.

- (3) If the Chairman decides that the Committee should meet, he shall instruct the Clerk to arrange for the first meeting to be held within the next seven working days to consider the complaint.
- (4) If the Chairman decides not to hold such a meeting and conveys to the Clerk his decision as well his reasons for making such a decision, the Clerk shall inform other members of the Chairman's decision and his reasons. If any member indicates disagreement with the decision in writing, the Clerk shall, by way of a circular, ask the members to forward replies to him within three working days on whether a meeting should be held to consider the complaint. In the event that the Clerk receives replies in which the majority of members indicate their support for holding a meeting, he shall ask the Chairman to fix the date, the time and the venue for the meeting. The first meeting shall be held within the next seven working days.
- (5) If the Chairman makes a decision of not holding a meeting and the Clerk does not receive replies from a majority of members indicating disagreement with this decision after the expiry of the three-day deadline since the issue of the circular, the Committee will not take any further action on the complaint.

Preliminary consideration

- (6) The Committee may hold a meeting or a series of meetings to consider the complaint.
- (7) The purposes of such meetings are:
 - (i) To ascertain the subject of the complaint and the provisions of the Rules of Procedure relevant to the allegations in question; and
 - (ii) To gather information relevant to the complaint and the allegations in question, such as the dates, amounts of money (if any), persons involved, etc. Such information should not include media reports, information provided by anonymous persons and speculations, inferences or judgements made by individuals.
- (8) In considering a complaint relating to a Member's claims for reimbursement of operating expenses, the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.

- (9) The Committee may invite the complainant to attend a meeting(s) to provide information. The Committee may also invite the Member under complaint to attend a meeting(s) to give explanations, and provide information. At the time of making the invitation, the Committee shall inform the Member under complaint that if he refuses to attend such meeting(s) or refuses to answer questions of the Committee at such meetings, the Committee may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before the Committee, and to give evidence or to produce documents, and may cause him to be examined on oath.
- (10) In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.
- (11) If the Member under complaint admits all the allegations at this stage, and the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, the Committee shall report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint.
- (12) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (13) If the Committee decides to conduct an investigation into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint and to provide the Member under complaint with information received in relation to the complaint.
- (14) In the course of conducting an enquiry, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. At such a hearing, the Committee may cause witnesses to be examined upon oath. The Committee may ask the complainant, the Member under complaint and other persons to confirm upon oath the information and statements they have provided at previous meetings.

- (15) The Member under complaint shall have the right to give explanations, make clarification and provide information on the subject of the complaints and the related matters. In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.

Suspension of work on the complaint

- (16) If, during the preliminary consideration or the investigation stages, the Committee has come to the knowledge that the complaint or related matters is/are being investigated by a law enforcement agency, or is/are relating to a case pending in a court of law, the Committee may suspend its investigation until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

The Committee's decision as to whether a complaint is substantiated

- (17) If the Committee decides that there is sufficient evidence to substantiate a complaint, it shall inform the complainant and the Member under complaint of its decision.
- (18) Upon receipt of the Committee's notification of its decision that the complaint is substantiated, the Member under complaint may make a request in writing to the Committee for a review of the decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable at hearings held earlier. Upon receipt of the written request for a review of the Committee's decision from the Member under complaint, the Chairman shall instruct the Clerk to arrange for a meeting to be held for such purpose within the next seven working days to hear the explanation made by the Member under complaint and to review its earlier decision.
- (19) If the Committee is of the opinion that the complaint is substantiated, or it is still of the opinion after the review that the complaint is substantiated, the Committee shall present a report to the Council on the complaint, in which the evidence and its opinion should be set out. The Committee may also make a recommendation to the Council as to a sanction to be imposed on the Member under complaint under Rule 85 of the Rules of Procedure. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part.

- (20) If the Committee is of the opinion that the complaint is not substantiated, it shall convey the decision to the complainant and the Member under complaint. The Committee may decide whether it should submit a report on this to the Council. If the Committee decides not to submit a report on this to the Council, members or any other person must not disclose any information regarding the complaint, except the evidence taken before the Committee and documents presented to it during meetings of the Committee held in public.

Confidentiality Requirement

- (21) All members and other persons attending meetings of the Committee held in camera (except the Member under complaint) shall be required to sign a confidentiality undertaking that they will not publish evidence taken before the Committee, documents produced to it, or its deliberations and decisions before the Committee has presented its report to the Council. Where the Committee finds that a member or other person has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the member or that other person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the Rules of Procedure, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.
- (22) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 17 or 20, the latter shall be required to sign a confidential undertaking not to publish any document marked as confidential by the Committee before it has presented its report to the Council. Where the Committee finds that the Member under complaint has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.
- (23) Meetings of the Committee, including those at which hearings are conducted, shall be held in camera. However, hearings shall be conducted at meetings held in public if the Member under complaint makes such a request.
- (24) The transcript of evidence taken at such hearings shall be published in full as far as possible and form part of the report of the Committee.

Participation of members in the deliberations of the Committee

- (25) No member of the Committee 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.

Reply Slip

(Please return on or before Monday, 12 January 2009)

Ref: CB(3)/C/3

To: Mr Arthur LEUNG
Clerk to Committee on Members' Interests
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Fax No: 2537 1204, 2810 1691)

**Views on
the draft Advisory Guidelines and
the draft Procedure for handling complaints**

My views on the draft Advisory Guidelines are:
(if necessary, please write on blank sheets and attach them to this reply slip)

2. My views on the draft Procedure for handling complaints are:
(if necessary, please write on blank sheets and attach them to this reply slip)

Signature : _____

Name : _____

Date : _____

Reply Slip

(Please return on or before Monday, 22 December 2008)

Ref: CB(3)/C/3

To: Mr Arthur LEUNG
Clerk to Committee on Members' Interests
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Fax No: 2537 1204, 2810 1691)

**Briefing session
on the draft Advisory Guidelines and
the draft Procedure for handling complaints**

I will / will not* attend the briefing session to be held at the beginning of second meeting of the Committee on Members' Interests, which has been scheduled for Friday, 2 January 2009 at 10:45 am in Conference Room B of Legislative Council Building.

Signature : _____

Name : _____

Date : _____

* Delete as appropriate