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Committee on Members' Interests

Background brief prepared by the Legislative Council Secretariat for the second meeting on 2 January 2009

The procedure of the Committee on Members' Interests for handling complaints received

Purpose

This paper sets out the deliberations of the Committee on Members' Interests¹ ("CMI") of the previous terms of the Legislative Council ("LegCo") on making a set of procedure for handling complaints it received.

CMI of the former LegCo

2. In 1990, the former LegCo formed an ad-hoc group to conduct an overall review of the Standing Orders of the Legislative Council of Hong Kong ("SO") to reflect current practice and account for the changing circumstances. At the Council meeting on 10 July 1991, a resolution was passed to make a number of changes to SO, which took effect on 12 September 1991 after the commencement of a new term of LegCo. Among these changes were the addition of new SO 60B and 64A respectively to provide for the establishment of a standing committee called "Committee on Members' Interests" and a registration system for Members' Interests.

3. Under SO 60B(1)(b), one of the functions of CMI was "to consider and investigate any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so"². After holding a

¹ At its meeting held on 6 February 1996, the Committee on Members' Interests agreed to change its Chinese name from "議員利益委員會" to "議員個人利益監察委員會", as recommended by a working group chaired by the then President of the Legislative Council.

² The Chinese version of SO was first available on 10 July 1996, on which day a resolution was passed by the former LegCo, to amend SO by adding thereto the Chinese text of SO.

series of meetings, CMI made a set of "Procedures of the Standing Committee on Members' Interests" (an extract of the relevant provisions on the handling of complaints is in **Appendix I**). CMI decided that a prima facie case had to be established before it would initiate further enquiry into a complaint and made a report to the Council. However, once an enquiry had been initiated, a report to the Council should be made regardless of whether or not the allegation was eventually substantiated because the public would demand to know the findings of CMI. CMI also considered that as its proceeding were not actually that of a court of law, it would be better to follow the system adopted by United Kingdom ("UK") House of Commons which did not allow legal representation by the Member under complaint.

CMI of the First LegCo (1998-2000)

4. The Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region ("RoP") was made by the First LegCo by passage of a resolution in Council on 2 July 1998. RoP 73(1)(c), which had the same wording as SO 60B(1)(b), empowered CMI to consider and investigate any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so.

5. CMI of the First LegCo considered that although no complaint had been received, a detailed procedure for handling complaints and conducting investigations in relation to the registration of Members' interests should be put in place to ensure fairness to the Member under complaint and the complainant, as well as to guard against abuse or favoritism by a dominant party when CMI dealt with such complaints. After detailed deliberations as well as making reference to the practice and procedure for handling complaints about legislators in other legislatures and the procedure adopted by CMI of the former LegCo, 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 all Members in August 1999. The Procedure (1999 version) adopted by CMI of the First LegCo is in **Appendix II**, and its main features are set out in the ensuing paragraphs.

Anonymous complaints [Paragraph 1 of the Procedure (1999 version)]

6. CMI decided that it would only deal with written complaints in which the complainants could be contacted and identified, and it would not consider anonymous complaints. The Clerk to CMI was also authorized to make initial contacts with the complainant to ascertain his identity. In arriving at this decision, CMI had taken into account the following viewpoints put forwarded by members:

- (a) if CMI did not know the identity of the complainant at all, there would be no one to provide evidence;
- (b) whilst a person who initiated a case without grounds in a court of law would run the risk of being charged for abusing the judicial system, an anonymous person who lodged a complaint with CMI without grounds would bear no such risk and there might be cases forged by the complainants;
- (c) there would be an inconsistency in CMI's approach if on the one hand, it did not deal with complaints which were based merely on speculations, inferences or unfounded judgements but, on the other hand, it was prepared to consider anonymous complaints; and
- (d) any member who considered that an anonymous complaint contained substantiated information could take up the case and lodge a complaint with CMI in his own name.

Two-part approach to decide whether or not to hold a meeting [Paragraphs 2 to 5 of the Procedure (1999 version)]

7. CMI was aware that the mere holding of a meeting to consider a complaint might lead some members of the public into thinking that the complaint had some grounds. Even if the complaint was later found to be groundless, damage might have already been done to the reputation to the Member under complaint. CMI therefore decided to take a two-part approach so that the Chairman would do a preliminary screening of the complaints received by CMI. The Chairman would first decide whether a meeting should be held and, if he decided not to hold a meeting to consider a complaint, that decision could be overturned if a majority of members considered that a meeting should be held. The final decision, therefore, still rested with CMI.

8. The Chairman might decide 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;
- (b) the complaint is based merely on speculations, inferences or unfounded judgements;
- (c) the complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted; and
- (d) other reasons he deems appropriate.

Preliminary consideration stage [Paragraphs 6 to 9 of the Procedure (1999 version)]

9. CMI considered that before proceeding with an investigation, there should be a preliminary consideration stage to ascertain the subject of the complaint and gather relevant information. 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 a meeting to give explanations and to provide information. CMI would then decide whether to proceed with an investigation.

Powers conferred on CMI by the Legislative Council (Powers and Privileges) Ordinance [Paragraph 11 of the Procedure (1999 version)]

10. CMI decided to clearly set out in the Procedure that being a standing committee, CMI might, in the course of an investigation, invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance³ (Cap. 382) to order any person to attend before CMI and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

Review of CMI's findings [Paragraph 14 of the Procedure (1999 version)]

11. The Procedure provided that 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.

Report to the Council [Paragraph 15 of the Procedure (1999 version)]

12. The Procedure provided that 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.

CMI of the Second LegCo (2000-2004)

13. CMI of the Second LegCo adopted the same set of Procedure (i.e. the 1999 version) and issued it to all Members in November 2000.

³ At the Council meeting on 20 December 2000, the Adaptation of Laws Bill 2000 was passed to adapt the Legislative Council (Powers and Privileges) Ordinance and a few other ordinances to bring them in conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the Peoples' Republic of China. One of the amendments made was that references to "立法局"(the Chinese term for Legislative Council) were adapted to "立法會", where appropriate. The short title of Cap. 382 has therefore been changed to "《立法會(權力及特權)條例》".

CMI of the Third LegCo (2004-2008)

14. CMI of the Third LegCo adopted the same set of Procedure (i.e. the 1999 version) and issued it to all Members in November 2004.

15. When CMI investigated the case of a Member's failure to register interests with the Clerk to LegCo pursuant to RoP during the period from November 2004 to February 2005, it made reference to the Procedure (1999 version).

16. 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). The phrase "if it thinks fit" was included in RoP 73(1)(c) and 73(1)(ca) to specify beyond doubt that CMI had the discretion to decide whether or not to proceed with investigation of a complaint after preliminary consideration.

17. 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. The Procedure (2006 version) adopted by CMI of the Third LegCo is in **Appendix III**. While retaining the main features highlighted in paragraphs 6 to 12 above, CMI added new features to the Procedure, so as to enhance fairness to the Member under complaint as well as tighten up the confidentiality requirement, which are set out in ensuing paragraphs.

Complaints against a former Member or about acts allegedly took place more than seven years ago [Paragraph 1 of the Procedure (2006 version)]

18. CMI decided that it would not handle any complaint which was made against a former Member, or was 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's decision was based on the following considerations:

- (a) it was difficult to impose sanction on a former Member;
- (b) it was unreasonable to expect a serving Member to keep his papers, records and accounts for more than seven years as they were not required to be kept for tax audit purposes;
- (c) the Member under complaint or witnesses might have difficulty to recollect events which happened many years ago;
- (d) various ordinances had provisions on the period of time beyond which legal actions might not be instituted; and
- (e) the seven-year rule was also adopted by the UK House of Commons.

Additional reasons for the Chairman of CMI to decide not to hold a meeting [Paragraph 2(c) of the Procedure (2006 version)]

19. CMI decided that in addition to the reasons mentioned in paragraph 8 above, 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.

Right of silence in inquiries [Paragraph 9 of the Procedure (2006 version)]

20. CMI noted that in the UK House of Commons, if a Member under complaint chose to remain silent at a disciplinary hearing, the authorities concerned might take this into account when compiling their report. Also, under common law, where there was established a prima facie case in which the accused was reasonably expected to give explanations but he did not, the fact that he remained silent might be taken by the adjudicating authority as a factor reinforcing the case, although silence in itself was not evidence of the alleged conduct and would not relieve the prosecution of the burden of proof. CMI considered that where a Member under complaint was reasonably expected to give explanations of his case but he did not, it was reasonable for CMI, when deliberating the case, to take this into account. CMI therefore decided that this should be stated in the Procedure so that the Member under complaint would be aware of the consequence of remaining silent. In this connection, CMI decided that the Procedure should be amended to provide that a Member under complaint would be informed, at the time when he was invited to attend a meeting of CMI, that CMI might invoke the powers under Cap. 382 of the Laws of Hong Kong to order him to attend before CMI, and to give evidence or to produce documents, and cause him to be examined on oath.

Persons allowed to accompany the Member under complaint [Paragraphs 10 and 15 of the Procedure (2006 version)]

21. CMI decided that in attending before CMI, a Member under complaint might be accompanied by a maximum of three persons, which might include his legal adviser(s), for the purpose of giving him assistance or advice, but the Member had to answer questions, give explanations or provide information himself. The main consideration was to ensure fairness to him in the inquiry. The role of the legal adviser to the Member under complaint would be to advise him the implications of his answers to CMI. In arriving at this decision, CMI had taken into account the following considerations:

- (a) law enforcement agencies might be conducting concurrent investigations into the same subject matter, or related matters, of the complaint against the Member concerned, the legal rights of the Member under complaint who had received no legal training might be jeopardized if he was not allowed to be accompanied by a legal adviser;
- (b) the Member who was accompanied by a legal adviser would have no excuse for avoiding answering questions by claiming that he had to first seek legal advice;
- (c) there had been cases in which witnesses summoned by select committees were accompanied by their legal advisers;
- (d) the fact that different practices had been adopted by the selected overseas legislatures: in the UK House of Commons and the House of Representatives of the Parliament of Australia, a Member under complaint might be accompanied by persons other than lawyers to attend inquiries, but only he himself was allowed to respond to enquiries; in the Canadian Parliament, a Member under complaint might be represented by counsel or by any other representative and, in the House of Representatives of the United States Congress, by counsel;
- (e) according to the practice of disciplinary proceeding in the civil service, the accused officer was allowed to invite a friend or colleague to assist him in a disciplinary inquiry hearing;
- (f) although a Member under complaint should personally answer CMI's questions as he should be accountable for his OER claims, he might still need to consult his assistants before he could give correct answers to CMI; and
- (g) the number of accompanying persons should be kept to a minimum

in order not to adversely affect the efficiency of the inquiries, and they should not be allowed to address CMI.

Investigation by a law enforcement agency [Paragraph 16 of the Procedure (2006 version)]

22. CMI decided that it should be provided in the Procedure that CMI might suspend its investigation if, during the course of doing so, it was learnt that the complaint or related matters was being investigated by a law enforcement agency, or related to a case pending in a court of law. The main consideration was whether the investigation conducted by CMI would prejudice the criminal proceedings. CMI also decided that whether it was appropriate to conduct parallel investigations should be considered on a case by case basis, having regard to all pertinent factors.

The consideration of honest mistakes in deliberating the sanction to recommend [Paragraph 19 of the Procedure (2006 version)]

23. CMI noted that there was concern that, as Members normally delegated to their assistants the work of making OER claims, which involved many details, there was always the possibility that a Member would make "honest mistakes" and be caught by RoP 83AA, which impose a strict and clear duty on Members to "ensure" that any information provided was true, accurate and complete. To address this concern, there was a proposal that an explicit provision might be provided in RoP that where there was an honest mistake on the part of the Member under complaint, CMI should take this into account when deliberating the sanction to recommend. Also, if such a provision was provided, there would not be accusations of favouritism towards the Member under complaint on the part of CMI should it recommend that no sanction be made.

24. After deliberations, CMI decided that it was more appropriate to set out, in the Procedure instead of RoP, the consideration of honest mistakes when CMI deliberated the sanction to recommend in respect of a substantiated complaint.

Confidentiality requirement [Paragraphs 21 to 24 of the Procedure (2006 version)]

25. CMI noted that the scope of RoP 81(1) was restrictive in that it related only to premature publication of evidence taken before a committee and documents presented to the committee. Members of the Public Accounts Committee were also concerned about the proceedings of the Committee's meetings being divulged, and this common issue would be examined by the

Committee on Rules of Procedure ("CRoP"). As it would take some time before CRoP completed the related study, provisions should be added under the Confidentiality Requirement section of the Procedure to require any persons attending inquiry of CMI held in camera to sign a confidentiality undertaking, with the consequence that, if they were found to have breached the undertaking, they might be reprimanded by the Council on a motion to that effect. 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 the Council.

26. Some members had expressed concern that if the Member under complaint was required to sign a confidentiality undertaking that he would not disclose the proceedings of hearings held in camera, the Member might be disadvantaged, as he was deprived of the opportunity to discuss his case with confidants within his political party or with legal advisers. This might also be regarded as depriving the Member of the constitutional right to confidential legal advice under the common law. To address this concern, the Member under complaint would be required to sign, only when CMI provided him with a draft report or documents marked as confidential, a confidentiality undertaking pledging not to divulge any confidential information before CMI had presented its report to the Council.

27. Regarding whether the Member under complaint would breach RoP 81, which prohibited the premature publication of evidence, by having private discussions with his advisers, which did not lead to premature publication of evidence, CMI considered that the aim of RoP 81 seemed not to prohibit the Member from discussing with his advisers, but to prohibit disclosure to the public.

Complaints relating to OER claims made by Members before the establishment of the mechanism for handling such complaints

28. On the question of whether CMI could consider and investigate complaints relating to OER claims which Members had made before the establishment of the mechanism for handling such complaints, CMI accepted the advice of the Legal Adviser that according to the general principle of fairness, a mechanism for handling complaints should not be applied retrospectively to acts done before its establishment, and that given abuse of OER claims could be regarded as misbehaviour, there was the existing provision in Article 79(7) of the Basic Law which provided for censure of Members for misbehaviour.

Advice sought

29. Members are invited to note the above information.

Council Business Division 3
Legislative Council Secretariat
30 December 2008

Extract of the Procedures of the Standing Committee on Members' Interests

II. Complaints by Members

(1) Upon receipt of a written allegation from one Member against another Member relating to the Register or the disclosure of interests, the Committee may hear both Members, together with other evidence, as they think fit and may then make a Report to the Council together with a recommendation as to what action should be taken.

(2) Before making any such Report the Committee shall give the Member concerned the opportunity to make written representations and of being heard with such witnesses as the Member may desire to call.

III. Complaints by the public

(1) Upon receipt of a written complaint from a member of the public concerning an alleged breach by a Member of the Standing Orders relating to registration or disclosure of interests, the Committee shall examine the evidence produced by the complainant and decide whether a prima facie case of a failure to comply with Standing Orders has been established.

(2) If the Committee is satisfied that a prima facie case of a failure to comply with the Standing Orders has been established, they may, if they think fit, call for an explanation from the Member, to whom the details of the case shall be communicated by the Clerk.

(3) If the Member confirms that the allegation is true, the Committee shall forthwith make a Report to the Council together with a recommendation as to what action should be taken.

(4) If the Member disputes the allegation, the Committee shall take evidence from such persons including the Member and his witnesses if he so wishes, as they think fit, and shall then after due consideration make a Report to the Council together with a recommendation as to what action should be taken.

IV. Participation of Members in the deliberations of the Committee

(1) No Member of the Committee shall participate as a Member of the Committee in a complaint case where the complaint was made by or against him.

**THE PROCEDURE OF
THE COMMITTEE ON MEMBERS' INTERESTS
FOR HANDLING COMPLAINTS RECEIVED
IN RELATION TO THE REGISTRATION AND DECLARATION
OF MEMBERS' INTERESTS**

July 1999

**The procedure of the Committee on Members' Interests
for handling complaints received
in relation to the registration and declaration of Members' interests**

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 (thereafter referred to as "the complainant) about the registration or declaration of interests of a Member (thereafter 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 (the 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 the Chairman or the Clerk receives a complaint by an anonymous or unidentifiable person or by a person who cannot be contacted, 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 decide not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration and declaration of Members' interests;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) the complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted; 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) The Committee may invite the complainant to attend a meeting to provide information. The Committee may also invite the Member under complaint to attend the meeting to give explanations and to provide information. 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.
- (9) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (10) 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.
- (11) 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. The Committee may cause witnesses to be examined at a meeting 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.
- (12) 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.

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

- (13) If the Committee decides that there is sufficient evidence to show and substantiate that the Member under complaint has provided false information in registering and declaring interests or has failed to register or declare registrable or declarable interests, it shall inform the complainant and the Member under complaint of its decision that the complaint is substantiated.
- (14) 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.

- (15) 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 concerned under Rule 85 of the Rules of Procedure.
- (16) 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

- (17) The evidence taken before the Committee and documents presented to it, or its deliberations and decisions, shall not, except in the case of meetings of the Committee held in public, be disclosed by a member or by any other person before the Committee has presented its investigation report to the Council. Any member who fails to comply with this requirement may be admonished or reprimanded by the Council on a motion to that effect.
- (18) 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.
- (19) 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

- (20) 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.

**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**

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**

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.