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Legislative Council

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**Paper for the third meeting of
the Committee on Members' Interests on 21 April 2009**

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

Purpose

This paper sets out the issues concerning "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" ("the Procedure") raised at the last meeting of the Committee on Members' Interests ("CMI") held on 2 January 2009 which members agreed to examine further.

Issues raised at the last meeting

2. At the last meeting, CMI decided that the Procedure (2009 version) in **Appendix I** should first be adopted and issued to all Members of the Legislative Council ("LegCo"), and the following issues should then be further examined:

- (a) whether CMI should consider anonymous complaints;
- (b) whether CMI should consider allegations widely reported by the media but no relevant complaint had been received by CMI;
- (c) whether a Member under complaint should be informed of a complaint when CMI decided not to consider the complaint; and
- (d) whether the time limit, as set out in the Procedure, for deciding if any meeting should be held to consider a complaint is too rigid.

3. Past deliberations of CMI and related information on these issues are set out below.

Whether CMI should consider anonymous complaints

4. At the last meeting, Hon Emily LAU expressed the view that it was unacceptable for CMI not to take further action on a complaint solely on grounds that it was made anonymously.

5. The decision to only deal with written complaints made by persons who could be contacted and identified was first made by CMI of the First LegCo and has since been adhered to. In arriving at this decision, CMI of the First LegCo had taken into account the following viewpoints:

- (a) if CMI did not know the identity of the complainant at all, there would be no one to provide evidence;
- (b) in agreeing to proceed with the investigation of an anonymous complaint, it would mean that CMI had already taken a stance and considered the information provided reliable. This would unnecessarily place a burden on the Member under complaint to prove himself innocent, and was contrary to the spirit of common law whereby the burden of proof was on the prosecution;
- (c) 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 and there might be cases made up by the complainants;
- (d) 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
- (e) 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.

Extracts from the minutes of the relevant meetings of CMI (i.e. 14 April 1999 and 25 May 1999) are in **Appendix II**.

6. Regarding paragraph 5(e) above, members commented at the last meeting that this arrangement was not entirely satisfactory because according to paragraph 25 of the Procedure (**Appendix I**), the member lodging a complaint would not be allowed to participate as a member in the handling of the complaint or in CMI meetings to deliberate on or inquire into the complaint.

7. Hon Alan LEONG had proposed that the Procedure be amended to the effect that while CMI would normally not consider anonymous complaints, it might decide otherwise when the circumstances so warranted. Under his proposal, CMI could request the LegCo Secretariat to make initial enquiries in respect of the complaint if a certain number of CMI members (e.g. four or more) considered the complaint was of a serious nature and should be pursued.

Whether CMI should consider allegations widely reported by the media but no relevant complaint had been received by CMI

8. At the last meeting, Hon Emily LAU made the comment that a mechanism should be established for dealing with the situation where allegations against a Member were reported by the media but CMI had not received any complaint related to the allegations. Hon Alan LEONG was of the view if CMI decided to take follow up actions on media reports, CMI would be assuming a proactive role in monitoring Members, and thus deviate from its existing practice of acting only on complaints.

9. The issue of CMI carrying out an investigation on its own initiative had been discussed by CMI of the Third LegCo at its meeting on 17 February 2006. The issue was not pursued after considering the following viewpoints:

- (a) the provision that CMI should act upon a complaint was consistent with the view that Members were also subject to scrutiny by members of the public;
- (b) where CMI was dominated by a political party, CMI would less likely be used, or seen to be used, as a platform to persecute opponents if it acted only upon complaints;
- (c) where a Member lodged a complaint against another Member, it was the duty of the former to come up with some basis for lodging the complaint. If CMI were to carry out an investigation on its own initiative, a separate mechanism might need to be put in place to frame a complaint as there was no complainant;
- (d) if CMI were to carry out an investigation on its own initiative, it might be performing both the roles of prosecutor and adjudicator, which might be unfair to the Member under investigation; and
- (e) there were few obstacles impeding members of the public to lodge a complaint with CMI. If a Member considered that a case was worth pursuing, he might lodge the complaint, either in his own name or ask any member of the public to do so.

An extract from the minutes of the meeting is in **Appendix III**.

10. The handling of allegations made in media reports has similar problem with the handling of anonymous complaints, i.e. there is no complainant to whom CMI can contact to provide evidence. In addition, Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP") provide that the functions of CMI are to consider complaints made in relation to the registration and declaration of Members' interests or to the conduct of Members in connection with their claims for reimbursement of operating expenses or applications for advance of operating funds. CMI of the previous terms of LegCo had all along taken the view that CMI should act only upon complaints and the aforesaid rules did not empower CMI to consider cases concerning allegations reported by the press but with no relevant complaint received. If CMI decides to consider allegations reported by the media, the aforesaid rules need to be amended.

Whether a Member under complaint should be informed of a complaint when CMI decided not to consider the complaint

11. At the last meeting, members discussed whether a Member who is under complaint should be informed of a complaint when CMI decided not to take any action on the complaint. Some members considered that it was fair to inform the Member concerned. There was also the view that some Members might not wish to be informed. One possible arrangement considered was that Members should give advance instructions to the Secretariat on whether they wished to be informed. Members can change such instructions at any time.

12. If CMI decides that the Member concerned should be informed, members should also decide whether the Member under complaint will only be informed of the content of the complaint but not the identity of the complainant.

Whether the time limit, as set out in the Procedure, for deciding if any meeting should be held to consider a complaint is too rigid

13. At the last meeting, Hon 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. Paragraphs 3 and 4 of the Procedure provide that the first meeting shall be held within seven working days from the date on which the Chairman decides that a meeting should be held or from the date on which the Chairman's decision of not holding a meeting is overturned by a majority of members. Paragraph 4 also provides that members disagreeing with the Chairman's decision of not holding a meeting should reply to the Clerk within three working days. Mr LEONG proposed that CMI should review if there was a need to set such a rigid time limit.

14. The above time limit was first adopted by CMI of the First LegCo and has not been changed since. The main consideration for setting out in detail a time limit for deciding whether to take action on a complaint was to guard against abuse by a dominant party and cater for the most antagonistic situation.

Advice sought

15. Members are invited to consider the issues set out in paragraph 2 above.

Council Business Division 3
Legislative Council Secretariat
9 April 2009

**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**

January 2009

**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 (i) is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or (ii) is made against a former Member, or (iii) 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.

**Extract from minutes of the meetings of the
Committee on Members' Interests
held on 14 April 1999 and 25 May 1999**

Meeting on 14 April 1999

4. Mr. YEUNG Yiu-chung asked if paragraph 2 of the Procedure which set out the reason for the Chairman to decide not to hold a meeting to consider a complaint should include anonymity of a complaint as one of the reasons. If this is the case, the reason should be so listed. The Chairman clarified that since it was recommended that the Committee should not consider anonymous complaints, the Procedure did not cover anonymous complaints.

6. Mr SIN Chung-kai said that while he agreed that anonymous complaints should normally not be considered, he had reservations that as a rule, all anonymous complaints were to be excluded. He pointed out that the Committee might need to consider those anonymous complaints which contained substantial information. In order to spell out such intention in the Procedure, he suggested that the last sentence of paragraph 1 be amended to read "However, the Committee will normally not consider an anonymous complaint". Members agreed to his suggestion. Deputy Secretary General ("DSG") then suggested the following textual amendments: (a) that the last two sentences of paragraph 1 be deleted; (b) that a sub-paragraph be added to paragraph 2 to the effect that the Chairman may decide not to hold a meeting in respect of an anonymous complaint. Members agreed to his suggestion.

8. SALA said that there might be practical difficulties encountered if anonymous complaints were accepted for consideration as the Procedure provided that the complainants might be asked to provide further information. The Chairman, Mr SIN Chung-kai and Mr YEUNG Yiu-chung considered that as the information contained in the original complaint might be sufficient for the Committee to start investigations, it might not be necessary to ask the complainant to provide additional information.

10. Ms HO Sau-lan, who just joined the meeting, expressed reservations about the decision just taken by the Committee to deal with substantiated anonymous complaints. She said that for anonymous complaints, no person would be able to affirm the allegation contained in the complaint. In agreeing to proceed with the investigation of an anonymous complaint, it would mean that the Committee had already taken a stance and considered the information provided reliable. This would unnecessarily place a burden on the Member under complaint to prove himself innocent, and was contrary to the spirit of common law whereby the burden of proof was on the prosecution. She said that she could only agree that the Committee could proceed with the investigation of a complaint by allowing the complainant not to reveal his

identity outside the Committee. If the Committee did not know the identity of the complainant at all, then the Committee should not take any further action on it, since there would be no one to provide evidence.

11. Mr SIN Chung-kai disagreed with Ms HO Sau-lan. He said that the Committee's handling of anonymous complaints was similar to the Police's handling of tip-offs. The Police would conduct investigations even if the tip-offs came from anonymous sources. Mr NG Leung-sing also said there was no need for the Committee to adopt the same stringent requirement on onus of proof as the court. He said that the Committee should not adopt a passive role in dealing with complaints and should not be seen to cover up for Members.

12. Ms HO Sau-lan said that she disagreed with the comparison made by Mr SIN Chung-kai as the Committee was not a law enforcement body whereas the Police was. She added that whilst a person who initiated a case without grounds in a court of law would run the risk of being charged of abusing the judicial system, an anonymous person who lodged a complaint without grounds with the Committee would bear no such risk. Mr SIN Chung-kai pointed out that meetings of the Committee deliberating on a complaint would be held in camera and the question was really on whether the Committee should deal with substantiated complaints from anonymous sources. Ms HO Sau-lan said that there would then be an inconsistency in the Committee's approach in that the Committee did not accept information in media reports etc. as evidence but was prepared to consider anonymous complaints.

13. The clerk pointed out that the manner for handling anonymous complaints as proposed in the Procedure was based on that adopted by the former Committee on Members' Interests in 1992. However, no information could be found on how the decision had been arrived at. It was also noted that current technological advances made it relatively easy for evidence to be forged. In paragraph 5 of the covering paper (LC Paper No. CB(3)1284/98-99(02)), it was suggested that where a member considered that a complaint, though anonymous, contained substantiated information, it would be for that member to consider taking up the case and lodging a formal complaint with the Committee. Ms HO Sau-lan agreed to this line of action. Mr YEUNG Yiu-chung commented that this line would place undue risk on the member concerned; he saw no problem in asking the Member under complaint to give explanations in respect of an anonymous complaint. Ms HO Sau-lan said that she could not accept the arrangement since she found it ironic that whilst the Committee was permitted to consider an anonymous complaint, it did not feel comfortable that a member should take up a complaint in his own name.

14. Ms HO Sau-lan said that the role of the Committee as being the prosecutor and the judge in dealing with anonymous complaints was in need of clarity. SALA said that adopting such a dual role might be inconsistent with the principle of natural justice. He said that this could be resolved if the member of the Committee who took up an anonymous complaint could be regarded as the complainant and ceased attending meetings of the Committee as

a member when the Committee was dealing with that particular case. Mr SIN Chung-kai said that the member who ceased to attend meeting of the Committee in order to lodge a complaint could not use the confidential information which he had received as a member of the Committee. Mr NG Leung-sing said that the Electoral Affairs Commission was playing a dual role too when handling a complaint like unauthorized publicity materials during elections, as it would first conduct investigations and make a ruling afterwards.

15. The Chairman invited members to vote on Mr SIN Chung-kai's proposal to allow the Committee to handle anonymous complaints. The Chairman, Mr SIN Chung-kai, Mr YEUNG Yiu-chung, Mr Bernard CHAN and Mr NG Leung-sing voted in favour of the proposal; whilst Ms HO Sau-lan voted against. Ms HO Sau-lan suggested that members of the Committee should consult Members of their respective parties before the next meeting at which the final decision would be taken. Mr NG Leung-sing suggested that when taking a decision on the above matter, the credibility of the Committee should be taken into account.

All members

Meeting on 25 May 1999

3. To enable him to decide on whether he would or would not support the proposal for the Committee on Members' Interests ("the Committee") to consider an anonymous complaint on an exceptional basis, Mr SIN Chung-kai enquired about the procedure adopted by overseas legislatures for the handling of anonymous complaints. The Chairman referred members to the papers tabled, which were extracts of the procedure adopted by the United Kingdom ("UK") and United States ("US"). Members noted that whilst the Parliamentary Commissioner for Standards of the UK Parliament would not entertain anonymous complaints, the US House of Representatives would require a complaint to be submitted in writing, under oath and accompanied by the name and legal address of the complainant. Mr SIN Chung-kai then enquired if anonymous complaints were defined in the procedure. He said that it was not clear whether a complaint lodged by a named person, who could not be contacted, was regarded as an anonymous complaint. Senior Assistant Legal Adviser ("SALA") said that paragraph 1 of the English version of the draft procedure had used the term "identifiable" to qualify the complainants. In other words, the complainant's identity had to be established before a complaint would be dealt with by the Committee. The clerk suggested that the Chinese version of the draft procedure could be revised to the effect that non-anonymous complaints referred to those complaints made by complainants who could be contacted.

4. The Chairman invited members to consider the clerk's suggestion. Mr NG Leung-sing said that he regarded anonymous complaints as complaints made by complainants who had not given their names. If a name was given, then the complaint was not an anonymous complaint. However, when the Committee proceeded with the investigation and could not contact or identify the complainant, the Committee had to end the investigation. Mr SIN Chung-kai asked if there was a legal definition for the term "anonymity". SALA replied that he did not have information whether there is one off hand but the ordinary literal meaning of the term was that a name was not provided. Ms HO Sau-lan said that she considered it adequate if it could be spelt out in the procedure that the identity of the complainant should be ascertained. SALA then suggested to specify in the procedure that the complainant should be "identifiable" before the Committee would consider such a complaint.

5. DSG said that in the circumstances and subject to members' agreement, the clerk should be delegated the power to make initial contacts with the complainant to ascertain his identity. The meeting agreed and asked Clerk, SALA the secretariat to revise the wording in paragraph 2 to this effect.

6. Mr SIN Chung-kai said that after considering the practices adopted by other parliaments, he withdrew his suggestion made at the last meeting that anonymous complaints could be considered by the Committee. Mr HO Sai-chu said that since the last meeting had formally voted on and adopted Mr SIN Chung-kai's proposal, he suggested that the Committee formally rescind such decision. The Chairman then asked every member present to give his/her opinion, and each in turn agreed that anonymous complaints should not be dealt with by the Committee.

7. Mr SIN Chung-kai asked if there was any reason to require an anonymous complaint to be circulated to members of the Committee for information since it had been agreed that the Committee would not handle these complaints. Deputy Secretary General ("DSG") responded that it was necessary for the Secretariat to inform the Committee members of such anonymous complaints which had been addressed to the Committee, although no further action would be taken.

**Extract from minutes of the meeting of the
Committee on Members' Interests
held on 17 February 2006**

6. Referring to paragraph 5.1 of LC Paper No. CMI/23/05-06 issued for the next agenda item, Ms Emily LAU said that the powers and functions of the Select Committee on Members' Interests of Dáil Éireann (i.e. House of Representatives) of the Parliament of Ireland (Select Committee), were set out clearly, which included that the Select Committee:

- (a) might carry out an investigation on its own initiative;
- (b) if in the course of an investigation it was found that the member concerned did not contravene the section of the Ethics in Public Office Acts to which the complaint related, but might have contravened another, it might investigate the latter contravention;
- (c) should not carry out an investigation if the person concerned was no longer a member, unless requested by the person under complaint to carry out or continue with the investigation; and
- (d) might discontinue an investigation at its own discretion if it considered that the complaint was frivolous or vexatious.

She enquired if the Committee had ever discussed the issues of carrying out an investigation on its own initiative and the handling of anonymous complaints.

7. The clerk replied that it could be read from Rule 73(1) of the RoP that the Committee had to act upon a complaint and this had been the case since the Committee was first established. Also, it was provided in The Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration and Declaration of Members' Interests (the Procedure) that anonymous complaints would not be handled. Assistant Secretary General 3 (ASG3) said that the Committee in a previous term had consciously decided that it should only act upon a complaint, which might also be lodged by a Member. The Chairman said that the provision that the Committee should act only upon a complaint was consistent with the view that Members were also subject to scrutiny by members of the public. The Deputy Chairman added that one of the considerations of the Committee was that where the Committee was dominated by a political party, the Committee would less likely be used, or seen to be used, as a platform to persecute opponents if it only acted upon a complaint. Mr LI Kwok-ying said that if the Committee carried out an investigation on its own initiative, the member proposing an investigation should not be allowed to take part in the investigation as he might have already

taken a view on the case. On balance, he considered that the Committee should not carry out an investigation on its own initiative.

8. Ms Emily LAU said that given that the Select Committee of the Irish Parliament was empowered to carry out an investigation on its own initiative, there might be merits in such an arrangement. Mr Alan LEONG said that the Ethics in Public Office Acts provided the legal basis for initiating investigations by the Select Committee, which was not the case for the Committee. Also, as members of the Dáil Éireann were returned by the general elections, the persecution of minority members was less likely to occur as all members were subject to public scrutiny. Moreover, where a Member lodged a complaint against another Member, it was his duty to come up with some basis for lodging the complaint. If the Committee were to carry out an investigation on its own initiative, a separate mechanism might need to be put in place to frame a complaint as there was no complainant. SG said that if the Committee were to carry out an investigation on its own initiative, it might be performing both the roles of prosecutor and adjudicator, which might be unfair to the Member under investigation.

9. Mr Albert CHENG said that there were few obstacles impeding members of the public to lodge a complaint with the Committee. If a Member considered that a case was worth pursuing, he might lodge the complaint, either in his own name or ask any member of the public to do so. Hence, he considered that there was no need to provide for the Committee with the power to carry out an investigation on its own initiative. Ms Emily LAU said that after considering other members' views, she would not pursue the matter for the time being.