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Committee on Members' Interests
Paper for the first meeting on 20 November 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**

Purpose

This paper invites members to consider the draft "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" for issue to Members of the Fourth Legislative Council (LegCo).

Background

2. 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".

3. CMI of the First 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.

4. 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.

5. 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.

6. Members may wish to note that the Procedure (1999 version) was put to use 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. 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

7. 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).

8. 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 4 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 4(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.

9. The revised Procedure (2006 version) was issued to all Members on 6 July 2006.

Advice sought

10. Subject to any amendment members may wish to make to the Procedure (2006 version) in the **Appendix**, members are invited to consider issuing it to all Members.

Council Business Division 3
Legislative Council Secretariat
17 November 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.