

立法會
Legislative Council

LC Paper No. CMI/49/09-10

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

Committee on Members' Interests

**Minutes of the fourth meeting
held on Wednesday, 16 December 2009 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Sing-chi
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
- Clerk in attendance** : Mr Arthur LEUNG
Chief Council Secretary (3)1
- Staff in attendance** : Ms Pauline NG
Secretary General
- Mr Jimmy MA, JP
Legal Adviser
- Mrs Justina LAM
Assistant Secretary General 3
- Ms Connie FUNG
Senior Assistant Legal Adviser 1
- Mrs Sharon TONG
Principal Council Secretary (Complaints)
- Miss Lolita SHEK
Senior Council Secretary (3)1

Agenda Item I only

Mr Watson CHAN
Head (Research and Library Services)

Dr Yuki HUEN
Research Officer 8

Action

- I. 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 – whether the Committee on Members' Interests should consider anonymous complaints and allegations reported by the media against Members**
(LC Paper Nos. CMI/16/09-10 and IN 02/09-10)

The Chairman said that at the last meeting held on 21 April 2009, the Committee on Members' Interests ("CMI") discussed the procedure of CMI for handling anonymous complaints and allegations reported by the media against Members of the Legislative Council ("LegCo"). To facilitate further consideration of the issues, members decided that the views of all Members be sought. In this connection, the Secretariat issued a paper on 22 June 2009 to consult all Members and they were asked to complete and return a questionnaire. The outcome of the consultation was set out in LC Paper No. CMI/16/09-10 for members' consideration.

2. On the invitation of the Chairman, Assistant Secretary General 3 ("ASG3") said that at the last meeting, Secretary General ("SG") had informed members that she, in her capacity as the Controlling Officer of the financial provisions allocated to The Legislative Council Commission, would conduct initial enquiries when she received complaints, anonymous or otherwise, on Members' claims for operating expenses ("OER claims") or applications for advance of operating funds ("AOF applications") or when such allegations reported by the media had come to her notice. Also, as it was within the terms of reference of CMI to consider complaints about Members' OER claims or AOF applications, SG would keep CMI informed of the progress of such enquiries. ASG3 then briefed members on the outcome of consultation as set out in paragraphs 7 to 11 of LC Paper No. CMI/16/09-10. ASG3 added that on the basis of the consultation outcome, members were invited to consider the following arrangements set out in paragraph 12 of the paper:

- (a) SG, as the Controlling Officer, would keep CMI informed of the progress of enquiries she conducted in respect of complaints or allegations about Members' OER claims or AOF applications;

- (b) the Secretariat would conduct initial enquiries on an anonymous complaint if five or more CMI members had given consent to it, and might contact the Member who was the subject of the complaint or allegations for clarifications or explanations. The Secretariat would then submit its findings from the initial enquiries to CMI. CMI would not take further action on the complaint unless a non-anonymous complaint was received; and
- (c) CMI would not consider allegations reported by the media unless a complaint with an identifiable complainant was received.

3. On the invitation of the Chairman, Head (Research and Library Services) ("H(RL)") briefed members on the mechanisms adopted by selected overseas legislatures for handling complaints and allegations reported by the media concerning Members' registration or declaration of interests, as set out in the information note (LC Paper No. IN 02/09-10) prepared by the Research and Library Services Division ("RLSD"). H(RL) explained that the House of Commons of the United Kingdom ("UK") and the House of Representatives of the United States ("US") would not consider anonymous complaints whereas the House of Commons of Canada would. In the House of Representatives of the Australian Parliament, it was open for the Standing Committee of Privileges and Members' Interests to decide whether or not to consider anonymous complaints but there had not been such a case so far. In both UK and Australian parliaments, allegations reported by the media would not be considered but they might be considered by the legislatures in Canada and US.

4. Ms Emily LAU said that Members belonging to the Democratic Party ("DP") supported the proposal for CMI to consider anonymous complaints and allegations reported by the media as it would increase the transparency of the legislature. As anonymous complaints might contain substantive information which could be followed up, and there were overseas legislatures which would consider anonymous complaints or allegations reported by the media, she considered it appropriate for CMI to consider them. Ms LAU added that if the majority of the Members did not support the idea, Members of DP would not insist on that.

5. On the invitation of the Chairman, ASG3 explained that question 1 in the questionnaire sought Members' views on whether in principle, CMI should consider anonymous complaints. Question 2 was drafted in accordance with the proposal put forward at the last meeting on 21 April 2009 that the Secretariat should make initial enquiries in relation to an anonymous complaint if a certain number of CMI members had given consent to it. ASG3 said that over 50% of Members had agreed to the proposal of the Secretariat's conducting initial enquiries, with 16 of them supporting a threshold of four CMI members while

another 15 members supporting a higher threshold of five members. The action in paragraph 12(b) in the paper had been proposed on the basis of such outcome.

6. Ms Emily LAU said that she generally agreed to the arrangements proposed in paragraph 12 of the paper. Yet, CMI should be cautious in deciding if the Secretariat should conduct initial enquires on anonymous complaints if five or more CMI members had given consent to it, as proposed in paragraph 12(b) of the paper, as it might go against the wish of the majority of Members, who were in principle opposed to the dealing of such complaints by CMI, as reflected by the outcome of question 1 of the questionnaire. The Chairman said that there might be difficulties in reconciling the responses to questions 1 and 2 in the questionnaire.

7. Ms Emily LAU noted that the support given by Members to the follow-up actions to be taken on anonymous complaints set out in questions 2 to 4 in the questionnaire was not overwhelming, as many Members including those belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") had not responded to those questions at all. Mr WONG Yung-kan responded that Members belonging to DAB trusted that CMI would handle anonymous complaints appropriately, and therefore had not responded to those questions in the questionnaire (i.e. questions 2 to 4).

8. In response to the Chairman, SG said that it was her duty to conduct initial enquiries whenever she received complaints, anonymous or otherwise, on OER claims or AOF applications or when such allegations reported by the media had come to her notice. If a complaint was lodged because of some misunderstanding of the OER system on the part of the complainant, the Secretariat staff would explain the situation to him and the case would be resolved. SG further explained that at the last CMI meeting, she had suggested, and the CMI had agreed, that to provide a link between her inquiries and the work of the CMI, she would forward the outcome of her preliminary inquiries to CMI if the matter fell within the ambit of CMI's work. It would then be for CMI to decide whether or not to take further action if it was found that the Member concerned might have breached the relevant rule.

9. SG said that the outcome of consultation indicated that the majority of the Members considered that normally anonymous complaints should not be considered by CMI as it might run the risk of acknowledging them and the system might be subject to abuse. However, the majority of Members agreed that the Secretariat should conduct initial enquiries on an anonymous complaint if four or five CMI members, which was a high threshold, considered that the complaint contained substantive information which should be followed up. On the basis of the outcome of SG's initial enquiries, CMI might then decide whether or not to take further action.

10. Ms Emily LAU suggested that a second consultation exercise be conducted so as to gain a better understanding of Members' views. The Chairman concurred and considered that Members should be consulted specifically on the proposed arrangements in paragraph 12(b) of the paper.

11. Mr WONG Sing-chi said that while the outcome of the consultation provided a general indication of the preferences of Members, it was not binding on CMI and it was up to CMI to make the relevant decision. Mr WONG suggested that as Members' views on questions 1 and 5 in the questionnaire were quite clear, the next round of consultation should focus on a proposal based on the other three questions.

12. Ms Emily LAU noted that the questionnaire (questions 2 to 4) asked Members whether they agreed to the conduct of initial enquiries by the Secretariat in relation to anonymous complaints only. She considered that allegations reported by the media should be handled in the same manner as anonymous complaints and Members should be asked in the next consultation exercise if they would agree to that. Members agreed.

13. On the invitation of the Chairman, ASG3 said that as Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP") empowered CMI to act upon complaints only, it had been the practice of CMI not to carry out an investigation on its own initiative in response to allegations reported by the media.

14. SG said that while a referral made by her to CMI after making initial enquiries on a Member's OER claims or AOF applications might be regarded as a complaint, she was not authorized under the existing arrangements to refer to CMI anonymous complaints and allegations in relation to the registration and declaration of interests by Members.

15. On the invitation of the Chairman, Legal Adviser ("LA") advised that according to the existing RoP, CMI could only act on complaints but it was not specified in the RoP what constituted a complaint. He said that members might wish to deliberate the merits of CMI considering allegations reported by the media first, before considering the implementation issues such as how the relevant rules of the RoP should be amended, if necessary.

16. Mr WONG Sing-chi considered that it was reasonable that the allegations reported by the media should be handled in the same way as anonymous complaints. He considered that the terms of reference of CMI should be revised if found necessary.

17. Mr Alan LEONG agreed that Members should be consulted again on whether the arrangements set out in paragraph 12(b) of the paper should also be adopted for handling allegations reported by the media.

18. Mr WONG Yung-kan said that although the outcome of the first round of consultation was very clear, he had no objection to the conduct of a second round of consultation.

19. Mr WONG Yung-kan added that some Members might still choose not to respond to some of the questions in the questionnaire in the second round of consultation. The Chairman said that it should be specified clearly in the questionnaire that whether Members were invited to respond to all the questions.

20. SG suggested that Members should also be advised that the relevant rules of the RoP might need to be amended if allegations reported by the media were to be considered by CMI.

the Clerk

21. Ms Emily LAU suggested that the draft consultation paper and questionnaire should be circulated to members for endorsement. Members agreed.

II. Handling of complaints against Members and their offices under the Redress System of the Legislative Council (LC Paper No. CP 201/09-10)

22. On the invitation of the Chairman, Principal Council Secretary (Complaints) ("PCS(C)") briefed members on the paper on the handling of complaints against Members and their offices under the Redress System of LegCo (LC Paper No. CP 201/09-10). PCS(C) said that the Secretariat planned to set up, on the Secretariat's Intranet, an electronic central register of the complaints and views about Members or their offices received from the public. This would enable all Members to have a complete picture of such complaints and views and facilitate them in considering whether follow-up action was necessary. All Members and authorized staff of the Secretariat would have access to the register through the use of a password. PCS(C) sought members' views on whether the complaints being handled by CMI should be included in the register.

23. In response to Mr Alan LEONG's enquiry, PCS(C) said that the register had yet to be set up.

24. The Chairman said that it was likely that Members would pass on the passwords to their staff members and it was difficult to control access to the register. It was possible that information in the register might be made public with malicious intent, say by a former employee of a Member, which might cause nuisance to a Member unnecessarily.

25. Mr WONG Yung-kan shared the concern of the Chairman. He stressed that Members should be fully consulted on the introduction of the initiative.

26. Mr Alan LEONG expressed doubt on the need to set up the register as CMI would inform the Member under complaint if it was to conduct an investigation into a complaint against him. As the procedure of CMI for handling complaints should be followed, complaints being handled by CMI should not be included in the register. He enquired about the purpose of establishing the register. Ms Emily LAU also enquired how the idea of setting up the register came about.

27. SG responded that as complaints against and views on Members and their offices were rarely received by the Secretariat in the past, there was no systematic way of handling such complaints and views. At present, such complaints or views were circulated to Duty Roster Members ("DRMs") for information only, but follow-up action could be taken if so requested by DRMs. Unless specifically requested by the complainants that such complaints/views be copied to all Members, it was usual practice that correspondence received in the previous week be circulated only to DRMs of the present week. As such, Members including DRMs would not have a complete picture of all the complaints and views from the public, and some of the views were constructive comments on LegCo Members' work. SG added that the handling of such complaints and views by DRMs on a week-by-week basis was arbitrary and similar cases might be handled in a different manner by DRMs of different weeks. The setting up of a central register might facilitate Members' access to key information of all such complaints and views.

28. Mr WONG Sing-chi expressed concern that some Members might make use of the information in the register to achieve political purposes. Also, Members might have different views on how the complaints and views should be handled. SG responded that under the existing DRM system, such information was made available to some Members, i.e. DRMs, and the issue of the concern had already existed.

29. Ms Emily LAU noted that the Secretariat had pointed out in the paper that the handling of complaints or views by DRMs on a week-by-week basis was quite arbitrary and sometimes might make follow-up actions rather difficult. While she considered there might be certain merits in establishing the register in that it enabled all Members to have a complete picture of the complaints and views received by the Secretariat, she considered it more important that the background briefs prepared by the Complaints Division on individual complaint cases should provide information on how previous similar cases had been handled.

30. The Chairman agreed to Ms Emily LAU's views and added that the Complaints Division should set out in the background briefs, for DRMs' consideration, options on follow-up actions, such as whether the complaints or views should be copied to all Members. Ms Emily LAU said that the Chairman's suggestion would facilitate the handling of complaints and views in a consistent manner.

31. Ms Emily LAU said that Members must be consulted on the setting up of the register. The purpose of the initiative should be explained clearly to Members. Ms LAU also expressed concern about the possible leakage of information kept in the register and suggested that security measures, such as encryption of data, should be put in place.

32. As regards whether complaints handled by CMI should be included in the register, the Chairman said that Members should be consulted on the setting up of the register first and CMI would need to deliberate at what stage of a complaint it should be included in the register.

33. Ms Emily LAU said that if the register was meant to be an objective record of the complaints and views received by the Secretariat about Members and their offices, all such complaints and views received, including those being handled by CMI, should be included in the register, although certain information might be withheld for good reasons. Nevertheless, the particulars to be included in the register should be considered very carefully by Members.

34. Members agreed that the central register should contain complaints and views received by the Complaints Division only.

35. SG said that the central register would be for internal use by the Secretariat pending consultation with Members. Members raised no objection.

36. Ms Emily LAU said that when the handling of the alleged misbehavior of Hon KAM Nai-wai was discussed at meetings of the House Committee recently, some Members were of the view that the case should not be handled by the mechanism under Rule 49B of the RoP, which should be invoked only for dealing with allegations so serious that, if proven, should lead to disqualification of the Member concerned from office. They considered that if CMI was not authorized to handle the case because the subject matter was not within its terms of reference, a separate mechanism should be established to handle such kind of cases which might lead to punishment of a lesser form than the disqualification of a Member from office. Ms LAU suggested that Members should also be consulted on the matter.

37. The Chairman agreed that there should be a mechanism to facilitate fact finding before the procedure under Rule 49B of the RoP was activated to deal with such cases. However, she considered that Members should be

consulted in future separately on whether LegCo should handle such cases under a mechanism different from that under Rule 49B of the RoP.

III. Disclosure of pecuniary interests under Rule 83A of the Rules of Procedure

(LC Paper No. CMI/17/09-10)

38. The Chairman said that the item had been added to the agenda of the meeting at the request of several CMI members. She then invited the Clerk to introduce the paper (LC Paper No. CMI/17/09-10).

39. The Clerk said that Rule 83A of the RoP provided that in the Council or in any committee or subcommittee, a Member should not move any motion or amendment relating to a matter which he had a pecuniary interest, whether direct or indirect, or speak on such matter, except where he disclosed the nature of that interest. At a recent committee meeting at which several controversial funding applications for a project were considered, some Members expressed concern about whether the committee chairman should be regarded as having a pecuniary interest in the matter when he was an independent non-executive director of a company which had indicated intention to bid for contracts under the project, whether he should have disclosed such interest at the beginning of his speech, and whether he should preside over the deliberation of the matter.

40. The Clerk said that the RoP did not provide any definition of pecuniary interest. In judging whether a Member had a pecuniary interest, a principle which might apply was whether the interest might reasonably be thought by others to influence the Member's actions or speech in the matter being considered. There was no immediate answer as to whether a non-executive directorship should give rise to a pecuniary interest and it was a matter for individual Members to judge whether they had a pecuniary interest in the matter under consideration at the relevant meeting, whether that interest was direct or indirect, and decide whether and when he should disclose that interest. He added that the RoP did not prohibit a committee chairman from chairing a meeting on grounds of pecuniary interest or role conflict, but in the past, Members had on their own volition chosen not to chair a meeting when they felt that they were unable to do so because there was a conflict of role or interests in the matter being considered by the meeting.

41. At the request of Ms Emily LAU, the Clerk further explained that Rule 84 of the RoP provided that a Member should not vote upon any question in which he had a direct pecuniary interest. It also provided a mechanism under which any Member might move a motion to disallow the vote of a Member on grounds of his direct pecuniary interest before the result of the voting was declared or move a motion for the withdrawal of the Member from the Council meeting concerned.

RLSD

42. Mr Alan LEONG suggested that RLSD should conduct a research into the practices adopted by overseas legislatures regarding disclosure of pecuniary interests by legislators, so as to facilitate Members to consider the relevant mechanism in Hong Kong. Members agreed.

43. Ms Emily LAU expressed the concern that arguments and controversies over the subject of conflict of interests might arise at the upcoming meeting of the Finance Committee ("FC") on 18 December 2009 at which the funding applications for the Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project would be considered. Ms LAU requested that the Secretariat issue a circular on the interpretation and application of the relevant rules of the RoP before that meeting for Members' reference so as to avoid a heated debate on the matter. She also sought the Secretariat's advice on how challenges on such interpretation and application from Members at the meeting should be dealt with.

44. SG advised that the basic principle was that it was a Member's responsibility to disclose his pecuniary interest in a matter being considered to enable other people to judge if his views on the matter had been influenced by his interest. Therefore, a Member should disclose his pecuniary interest at the beginning of his speech on the matter under Rule 83A of the RoP. The timing of disclosure of the interest depended on when he started to speak at the meeting. SG added that it had been the practice of the FC Chairman to remind Members at the beginning of a FC meeting to disclose their interests on the funding applications to be considered by the meeting.

45. The Chairman pointed out that some Members might ask other people to manage his investments and therefore might not know themselves that they had bought the shares of a particular listed company. There were provisions to exempt members of the accounting and legal trade from the requirement to disclose such kind of interests in handling papers of listed companies. The Chairman suggested that CMI might consider adopting similar arrangement.

46. LA advised that under Rule 83(5)(h) of the RoP, a Member was required to register the names of companies in which he had, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital, provided that the Member had knowledge of such an interest.

47. LA further advised that as the basic purpose of disclosing interests by Members was to enable other Members to know the pecuniary interest of the Member concerned in the matter being considered at a committee meeting, the Member's registration of the interest under Rule 83 of the RoP did not obviate his obligation to disclose the interest concerned at the relevant meeting. He stressed that in fulfilling their obligation to disclose interests, Members should

adhere not only to the texts and but the spirit of the relevant guidelines issued by CMI or the Rules of the RoP.

48. The Chairman asked whether a Member should declare his interest when the reduction of the pay of public officers was being considered by a committee meeting and some of his electors were public officers who would be affected by the reduction, even though such interest might be in common with the rest of the population of Hong Kong or it was a matter of government policy.

49. SG said that it was really a matter for the Members concerned to judge whether they had a direct or indirect pecuniary interest which they should disclose. She added that on many past occasions, Members had declared role conflicts even though no pecuniary interests were involved.

50. LA said that the existing mechanism governing the registration and disclosure of interests by Members as well as voting by Members who had direct pecuniary interests had been in force for a very long time. FC had handled cases of conflict of interests of Members from time to time under such mechanism.

51. Ms Emily LAU sought clarification on whether a Member should be regarded to be having a direct or indirect pecuniary interest in a project being considered by a committee if he was a non-executive director of a company which would bid for contracts under the project, and whether such Member could vote on the project under Rule 84 of the RoP.

52. LA explained that under the Company Ordinance (Cap. 32), there was no distinction between executive and non-executive directors. Both were members of the board of directors of a company and had the same responsibilities. LA added that according to the statutes of overseas legislatures, which governed the disclosure of pecuniary interest at meetings of local authorities by their Members, a Member had an indirect pecuniary interest in any matter in which the council was concerned, if he was a director, executive or otherwise, of a company that had a direct pecuniary interest in the matter.

53. LA explained further that Rule 84 of the RoP should be applied and interpreted in a similar manner. As it was the company of which a Member was a director, not its directors, which would bid for the contracts under a project being considered by a committee, it might be the case that the Member did not have any direct pecuniary interest and he should not be disallowed from voting. Moreover, as there might be different modes of ownerships of a company, a Member who was a partner of a company which had a direct pecuniary interest in a matter might not necessary be regarded as having a direct pecuniary interest in the matter.

54. LA stressed that each case should be considered individually on its own merits. It was really up to individual Members to judge whether he had a pecuniary interest to disclose, as there might be financial arrangements between him and the company concerned, which were not known to others. Such cases had been handled by the Council and its committees before. Members might need to debate at a Council and committee meeting to decide whether a particular Member was having a pecuniary interest. LA added that the mechanism also provided that CMI might investigate the cases and recommend under Rule 85 of the RoP to sanction a Member who had breached the relevant rules.

55. Ms Emily LAU requested that a circular providing guidance on the interpretation and application of the relevant Rules of the RoP should be issued to Members for reference before the FC meeting on 18 December 2009. She also requested the Secretariat to check how similar cases of conflicts of interests were handled at Council or committee meetings in the past and advise how such cases should be handled at the upcoming FC meeting.

56. Mr WONG Yung-kan said that the FC Chairman should remind Members to disclose interests at the beginning of the discussion of the relevant items on the agenda at the meeting on 18 December 2009.

the
Secretariat

57. SG said that the circular would be issued before the FC meeting and that appropriate opening remarks would be included in the chairman's brief for the meeting.

(Post-meeting note: a circular on "Procedural implication of pecuniary interest on speaking and voting on a matter before the Committee" (LC Paper No. FC 27/09-10) was issued to Members on 17 December 2009.)

58. The Chairman suggested that CMI might review Rules 83 and 84 of the RoP in order to provide clearer guidance for Members on the subject of disclosure of pecuniary interests.

IV. Any other business

59. Ms Emily LAU suggested that a closed session of the meeting should be conducted by CMI to discuss a complaint case received by CMI recently in the light of the appropriate timing for Members to disclose pecuniary interests as advised by SG in paragraph 44 above. Members agreed.

(Post-meeting note: The remaining part of the meeting was held in camera from 10:17 am onwards.)

Council Business Division 3
Legislative Council Secretariat
12 February 2010