

立法會

Legislative Council

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Committee on Members' Interests Paper for the fourth meeting on 16 December 2009

Outcome of consultation with Members on consideration by the Committee on Members' Interests of anonymous complaints and allegations reported by the media against Members

Purpose

This paper invites the Committee on Members' Interests ("CMI") to note the outcome of consultation with Legislative Council ("LegCo") Members on consideration by CMI of anonymous complaints and allegations reported by the media against Members.

Background

2. CMI is responsible for, among other things, consideration and investigation of complaints made in relation to the registration and declaration of Members' interests, and complaints concerning Members' claims for operating expenses ("OER claims") or applications for advance of operating funds ("AOF applications"), as stipulated in Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP").

3. Since the First Legislative Council ("LegCo"), CMI has adopted the principle that it will not deal with anonymous complaints on grounds that there will be no one to provide evidence since the identity of the complainant is unknown. However, any member who considers that an anonymous complaint contains substantiated information could take up the case and lodge a complaint with CMI in his own name. As a general practice, anonymous complaints are circulated to members under confidential cover for their information. As regards allegations reported by the media, as Rule 73(1)(c) and (ca) of the RoP only empowers CMI to act upon complaints, it has been the practice of CMI not to carry out an investigation on its own initiative in response to such allegations unless a specific complaint in connection with the allegations is received.

4. At its meeting held on 2 January 2009, CMI adopted the same Procedure¹ adopted by the CMI of previous terms for considering and investigating complaints. The Procedure was adopted for the time being pending further discussion of the procedure for handling anonymous complaints and allegations in media reports, as well as other issues.

5. At its further meeting on 21 April 2009, members agreed to consult all Members before deciding if a different approach ought to be adopted for the handling of such complaints and allegations. At the meeting, members noted that the Secretary General ("SG"), in exercising her duty as the controlling officer of ensuring the financial provisions allocated to The Legislative Council Commission ("the Commission") are properly spent, was taking a proactive role in handling complaints, anonymous or otherwise, and allegations reported by the media in relation to Members' OER claims or AOF applications. SG may seek clarifications or enquire from the Member who is the subject of the complaint(s) or allegation(s) ("the Member concerned") and if it is found from such clarifications or enquiries that the Member concerned might have breached the relevant rule, i.e. Rule 83AA of the RoP, she would refer the matters to CMI for its further action. SG advised members of CMI that since complaints relating to OER claims and AOF applications were within the terms of reference of CMI, she could keep CMI informed of all inquiries undertaken by her in respect of such anonymous complaints or media reports.

6. To assist CMI in considering the matter further, members decided that all Members be consulted on a number of issues, in particular whether, in principle, CMI should consider anonymous complaints and allegations reported by the media, and how far the Secretariat should assist CMI in conducting initial enquiries on such complaints or allegations if there is majority support from CMI members for CMI to do so. In this connection, a consultation paper together with a questionnaire (**Appendix I**) for completion by all Members was issued on 22 June 2009.

Analysis of the consultation outcome

7. A total of 59 Members have responded and returned the completed questionnaires. A summary of the responses from Members and the details of the responses are given in **Appendices II** and **III**. An analysis of the findings is set out in paragraphs 8 to 10 below.

8. With the exception of the President, all Members have responded to the consultation exercise. The findings are therefore representative of the views of Members of the current term. Some 60% of Members are of the view that CMI should in principle not deal with anonymous complaints and allegations reported by the media. However, over 50% of Members, including six Members who do not

¹ "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" was issued to Members on 13 January 2009.

consider that CMI should deal with such complaints or allegations, agree that the Secretariat should conduct initial enquiry if there is a majority of members of CMI giving consent to it. Among these 50% Members, 16 Members are in support of a higher threshold, i.e. five out of a total of seven members of CMI, for authorizing the Secretariat to conduct an initial enquiry. Almost 50% of Members agree that the Member concerned should be contacted for soliciting clarifications or explanations.

9. It appears that while the majority of Members do not consider it appropriate for CMI to deal with anonymous complaints or allegations or contact the Member concerned for clarifications, etc., there is a majority of Members in support of requesting the Secretariat to conduct initial enquiries about the complaints. Generally speaking, the conduct of an initial enquiry by a neutral party does help dispel unnecessary misunderstanding about Members and dispose of frivolous or groundless complaints. Over one-third of Members are in favour of taking more proactive actions in dealing with such complaints or allegations, and consider that CMI should pursue further if a prima facie case can be established. It appears that these Members do not consider the present arrangement set out in paragraph 3 above entirely satisfactory and Members are usually reluctant to take over an anonymous complaint and lodge the complaint with CMI in their own names.

10. One point worth noting from the outcome of the consultation exercise is that a total of 30 Members, despite agreeing to undertake initial enquiries, remain opposed to the consideration of anonymous complaints even if a prima facie case has been established. It appears that Members are strongly against the use of anonymous complaints to make allegations against a LegCo Member, and that by taking active actions to investigate into the matter, there is a risk of acknowledging anonymous complaints and the system may be subject to abuse.

11. As regards allegations reported by the media, 37 Members are opposed to CMI's consideration of these allegations. It is noted that this number of Members is greater than those who are opposed to CMI's consideration of anonymous complaints (34 Members). This indicates that Members have greater reservations about CMI's consideration of allegations reported by the media.

Matters for consideration

12. On the basis of the outcome of consultation with Members, members may wish to consider the following:

- (a) in the case of Members' OER claims or AOF applications, SG, as the Controlling Officer, will keep CMI informed of the progress of any enquiries she conducts in respect of complaints or allegations, be they anonymous or otherwise;
- (b) in respect of other matters within the terms of reference of CMI, the Secretariat will conduct initial enquiries on an anonymous complaint if

five or more CMI members have given consent to it. During the initial enquiries, the Member who is the subject of the complaint or allegation may be contacted for clarifications or explanations. Upon completion of the initial enquiries, the Secretariat will submit its findings to CMI. CMI will not take further action on an anonymous complaint unless a Member takes over it and lodge a complaint to CMI or a pertinent non-anonymous complaint is received; and

- (c) CMI will not consider allegations reported by the media unless a complaint with an identifiable complainant is received.

Advice sought

13. Members are invited to note the outcome of the consultation exercise and advise on the matters in paragraph 12 above.

Legislative Council Secretariat
10 December 2009

Committee on Members' Interests ("CMI")

**Consultation with Members on
the handling of anonymous complaints and
allegations made in media reports against individual Members**

	<u>Yes</u>	<u>No</u>
Q1 In principle, should CMI consider anonymous complaints?	<input type="checkbox"/>	<input type="checkbox"/>
Q2 Should the Secretariat conduct initial enquiries on an anonymous complaint if <u>four</u> or more CMI members consent to it? <i>(if the answer is no, please specify the number)</i>	<input type="checkbox"/>	<input type="checkbox"/> _____
Q3 During the initial enquiries, should the Secretariat contact the Member under complaint or his/her office to seek clarification or explanation?	<input type="checkbox"/>	<input type="checkbox"/>
Q4 If a prima facie case has been established upon completion of the initial enquiries but there is still no person lodging the complaint non-anonymously, should CMI consider the complaint further?	<input type="checkbox"/>	<input type="checkbox"/>
Q5 Should CMI consider an allegation reported by the media but no relevant complaint has been received?	<input type="checkbox"/>	<input type="checkbox"/>
Q6 Other comments:		

**Summary of views of Members on consideration by the Committee on Members' Interests ("CMI")
of anonymous complaints and allegations reported by the media against Members**

View	Number of Members					
	1	11	21	31	41	51 60
1. CMI should consider anonymous complaints.		Yes (24)			No (34)	
2. The Secretariat should conduct an initial enquiry if a number of CMI members consent to it.		Yes (31)			No (17)	
		at least 4 CMI members' consent is required (16)	at least 5 CMI members' consent is required (15)			
3. The Member under complaint or his/her office should be contacted for clarification or explanation.		Yes (29)			No (17)	
4. CMI should pursue further if a prima facie case has been established.		Yes (25)			No (22)	
5. CMI should consider an allegation reported by the media.		Yes (21)			No (37)	

**Outcome of consultation with Members on consideration by
the Committee on Members' Interests of anonymous complaints and
allegations reported by the media against Members**

Detailed results

Question 1

In principle, should CMI consider anonymous complaints?

No. of Members who have responded to this question	58
Yes	24 (41%)
No	34 (59%)
No. of Members who have not responded	1

Yes (24 Members)	No (34 Members)	Has not responded (1 Member)
Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi (DP) (9 Members)	Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him (DAB) (9 Members)	Hon LEUNG Kwok-hung (LSD) (1 Member)
Hon Miriam LAU Kin-ye Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang (LP) (3 Members)	Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou (HKFTU) (4 Members)	
Hon Alan LEONG Hon Ronny TONG Hon Tanya CHAN (CP) (3 Members)	Dr Hon Margaret NG Hon Audrey EU (CP) (2 Members)	
Hon LEE Cheuk-yan (HKCTU) (1 Member)	Hon Albert CHAN (LSD) (1 Member)	
Hon LEUNG Yiu-chung (NWSC) (1 Member)	Hon Frederick FUNG Kin-kee ¹ (HKADPL) (1 Member)	
Hon WONG Yuk-man (LSD) (1 Member)	Hon Cyd HO Sau-lan (CA) (1 Member)	
Hon Timothy FOK Dr Hon Joseph LEE Hon Paul CHAN Hon CHAN Kin-por Hon Mrs Regina IP Hon Paul TSE (Political affiliation undeclared/ Independents) (6 Members)	Hon CHEUNG Kwok-che (HKSWGU) (1 Member) Ir Dr Hon Raymond HO Dr Hon David LI Hon Mrs Sophie LEUNG Dr Hon Philip WONG Hon LAU Wong-fat Hon Abraham SHEK Hon LI Fung-ying Hon Jeffrey LAM	

¹ Hon Frederick FUNG considers that as the Legislative Council is a political body and there are political conflict and interests among political parties and Members, the complaint-handling mechanism should be invoked as passively and sparingly as possible. He believes that the Independent Commission Against Corruption or the Police will intervene should there be serious problems.

Yes (24 Members)	No (34 Members)	Has not responded (1 Member)
	Hon Andrew LEUNG Hon CHIM Pui-chung ² Prof Hon Patrick LAU Dr Hon LAM Tai-fai Dr Hon Priscilla LEUNG Dr Hon LEUNG Ka-lau Dr Hon Samson TAM <i>(Political affiliation undeclared/ Independents) (15 Members)</i>	

² Hon CHIM Pui-chung is of the view that CMI should only consider non-anonymous complaints. Investigation of anonymous complaints may have unfair and unreasonable consequences and also wastes resources.

Question 2

Should the Secretariat conduct initial enquiries on an anonymous complaint if four or more CMI members consent to it? (if the answer is no, please specify the number)

No. of Members who have responded to this question	48
(a) Yes, if at least four CMI members give consent	16 (33%)
(b) Yes, if at least five CMI members give consent	15 (31%)
(c) No, irrespective of the number of CMI members giving consent	17 (36%)
No. of Members who have not responded	11

Yes (31 Members)	No, irrespective of the number of CMI members giving consent (17 Members)	Has not responded (11 Members)
<p>(a) if at least four CMI members give consent (16 Members)</p> <p>Hon Miriam LAU Kin-yee Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang (LP) (3 Members)</p> <p>Hon LEUNG Yiu-chung (NWSC) (1 Member)</p> <p>Hon LEUNG Kwok-hung (LSD) (1 Member)</p> <p>Hon Mrs Sophie LEUNG Hon Timothy FOK Hon LI Fung-ying Dr Hon Joseph LEE Hon Jeffrey LAM Hon Andrew LEUNG Hon Paul CHAN Hon CHAN Kin-por Hon Mrs Regina IP Hon Paul TSE³ Dr Hon Samson TAM (Political affiliation undeclared/ Independents) (11 Members)</p> <p>(b) if at least five members give consent (15 Members)</p> <p>Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi (DP) (9 Members)</p>	<p>Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou (HKFTU) (4 Members)</p> <p>Hon Albert CHAN (LSD) (1 Member)</p> <p>Hon Frederick FUNG Kin-kee (HKADPL) (1 Member)</p> <p>Hon Audrey EU (CP) (1 Member)</p> <p>Hon Cyd HO Sau-lan (CA) (1 Member)</p> <p>Hon CHEUNG Kwok-che (HKSWGU) (1 Member)</p> <p>Ir Dr Hon Raymond HO Dr Hon Philip WONG Hon LAU Wong-fat Hon Abraham SHEK Hon CHIM Pui-chung Prof Hon Patrick LAU Dr Hon LAM Tai-fai Dr Hon Priscilla LEUNG (Political affiliation undeclared/ Independents) (8 Members)</p>	<p>Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him (DAB) (9 Members)</p> <p>Dr Hon David LI Dr Hon LEUNG Ka-lau (Political affiliation undeclared/ Independents) (2 Members)</p>

³ Hon Paul TSE is of the view that the four CMI members giving consent for the Secretariat to conduct initial enquiries should be from different political groupings or background as far as possible

Yes (31 Members)	No, irrespective of the number of CMI members giving consent (17 Members)	Has not responded (11 Members)
<p>Dr Hon Margaret NG Hon Alan LEONG Hon Ronny TONG Hon Tanya CHAN <i>(CP) (4 Members)</i></p> <p>Hon LEE Cheuk-yan <i>(HKCTU) (1 Member)</i></p> <p>Hon WONG Yuk-man <i>(LSD) (1 Member)</i></p>		

Question 3

During the initial enquiries, should the Secretariat contact the Member under complaint or his/her office to seek clarification or explanation?

No. of Members who have responded to this question	46
Yes	29 (63%)
No	17 (37%)
No. of Members who have not responded	13

Yes (29 Members)	No (17 Members)	Has not responded (13 Members)
Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi (DP) (9 Members)	Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou (HKFTU) (4 Members)	Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him (DAB) (9 Members)
Dr Hon Margaret NG Hon Alan LEONG Hon Ronny TONG Hon Tanya CHAN (CP) (4 Members)	Hon Albert CHAN (LSD) (1 Member)	Hon LEUNG Kwok-hung (LSD) (1 Member)
Hon Miriam LAU Kin-ye Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang (LP) (3 Members)	Hon Frederick FUNG Kin-kee (HKADPL) (1 Member)	Hon Cyd HO Sau-lan (CA) (1 Member)
Hon LEE Cheuk-yan (HKCTU) (1 Member)	Hon Audrey EU (CP) (1 Member)	Hon CHIM Pui-chung Dr Hon LEUNG Ka-lau (Political affiliation undeclared/ Independents) (2 Members)
Hon LEUNG Yiu-chung (NWSC) (1 Member)	Hon CHEUNG Kwok-che (HKSNGU) (1 Member)	
Hon WONG Yuk-man (LSD) (1 Member)	Ir Dr Hon Raymond HO Hon Mrs Sophie LEUNG Hon LAU Wong-fat Hon Abraham SHEK Hon Jeffrey LAM Hon Andrew LEUNG Prof Hon Patrick LAU Dr Hon Priscilla LEUNG Dr Hon Samson TAM (Political affiliation undeclared/ Independents) (9 Members)	
Dr Hon David LI Dr Hon Philip WONG Hon Timothy FOK Hon LI Fung-ying Dr Hon Joseph LEE Dr Hon LAM Tai-fai Hon Paul CHAN Hon CHAN Kin-por Hon Mrs Regina IP Hon Paul TSE (Political affiliation undeclared/ Independents) (10 Members)		

Question 4

If a prima facie case has been established upon completion of the initial enquiries but there is still no person lodging the complaint non-anonymously, should CMI consider the complaint further?

No. of Members who have responded to this question	47
Yes	25 (53%)
No	22 (47%)
No. of Members who have not responded	12

Yes (25 Members)	No (22 Members)	Has not responded (12 Members)
Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi (DP) (9 Members)	Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou (HKFTU) (4 Members) Hon Audrey EU Hon Alan LEONG Hon Ronny TONG (CP) (3 Members)	Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him (DAB) (9 Members)
Hon Miriam LAU Kin-yee Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang (LP) (3 Members)	Hon Frederick FUNG Kin-kee (HKADPL) (1 Member) Hon CHEUNG Kwok-che (HKSWGU) (1 Member)	Hon LEUNG Kwok-hung (LSD) (1 Member) Hon Cyd HO Sau-lan (CA) (1 Member)
Dr Hon Margaret NG Hon Tanya CHAN (CP) (2 Members)	Ir Dr Hon Raymond HO Hon Mrs Sophie LEUNG Dr Hon Philip WONG	Dr Hon LEUNG Ka-lau (Political affiliation undeclared/ Independents) (1 Member)
Hon Albert CHAN Hon WONG Yuk-man (LSD) (2 Members)	Hon LAU Wong-fat Hon Timothy FOK Hon Abraham SHEK Hon Jeffrey LAM Hon Andrew LEUNG Hon CHIM Pui-chung Prof Hon Patrick LAU Dr Hon LAM Tai-fai Dr Hon Priscilla LEUNG Dr Hon Samson TAM (Political affiliation undeclared/ Independents) (13 Members)	
Hon LEE Cheuk-yan (HKCTU) (1 Member)		
Hon LEUNG Yiu-chung (NWSC) (1 Member)		
Dr Hon David LI Hon LI Fung-ying Dr Hon Joseph LEE Hon Paul CHAN Hon CHAN Kin-por Hon Mrs Regina IP Hon Paul TSE (Political affiliation undeclared/ Independents) (7 Members)		

Question 5

Should CMI consider an allegation reported by the media but no relevant complaint has been received?

No. of Members who have responded to this question	58
Yes	21 (36%)
No	37 (64%)
No. of Members who have not responded	1

Yes (21 Members)	No (37 Members)	Has not responded (1 Member)
Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon CHEUNG Man-kwong Hon Emily LAU Wai-hing Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi <i>(DP) (9 Members)</i>	Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him <i>(DAB) (9 Members)</i>	Dr Hon LEUNG Ka-lau <i>(Political affiliation undeclared/ Independents) (1 Member)</i>
Hon Miriam LAU Kin-yee Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang <i>(LP) (3 Members)</i>	Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou <i>(HKFTU) (4 Members)</i>	
Dr Hon Margaret NG Hon Tanya CHAN <i>(CP) (2 Members)</i>	Hon Audrey EU Hon Alan LEONG Hon Ronny TONG <i>(CP) (3 Members)</i>	
Hon Albert CHAN Hon LEUNG Kwok-hung <i>(LSD) (2 Members)</i>	Hon LEUNG Yiu-chung <i>(NWSC) (1 Member)</i>	
Hon LEE Cheuk-yan <i>(HKCTU) (1 Member)</i>	Hon Frederick FUNG Kin-kee <i>(HKADPL) (1 Member)</i>	
Dr Hon David LI Hon CHAN Kin-por Hon Mrs Regina IP Hon Paul TSE <i>(Political affiliation undeclared/ Independents) (4 Members)</i>	Hon Cyd HO Sau-lan <i>(CA) (1 Member)</i> Hon CHEUNG Kwok-che <i>(HKSWGU) (1 Member)</i> Hon WONG Yuk-man <i>(LSD) (1 Member)</i>	
	Ir Dr Hon Raymond HO Hon Mrs Sophie LEUNG Dr Hon Philip WONG Hon LAU Wong-fat Hon Timothy FOK Hon Abraham SHEK Hon LI Fung-ying Dr Hon Joseph LEE Hon Jeffrey LAM Hon Andrew LEUNG Hon CHIM Pui-chung Prof Hon Patrick LAU Dr Hon LAM Tai-fai Hon Paul CHAN Dr Hon Priscilla LEUNG Dr Hon Samson TAM <i>(Political affiliation undeclared/ Independents) (16 Members)</i>	

Abbreviations

CA	Civic Act-up
CMI	Committee on Members' Interests
CP	Civic Party
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong
DP	Democratic Party
HKADPL	Hong Kong Association for Democracy and People's Livelihood
HKCTU	Hong Kong Confederation of Trade Unions
HKFTU	The Hong Kong Federation of Trade Unions
HKSWGU	Hong Kong Social Workers' General Union
LP	Liberal Party
LSD	League of Social Democrats
NWSC	Neighbourhood and Workers' Service Centre