

立法會 *Legislative Council*

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Committee on Members' Interests

Proposal for revision of the procurement provisions in the guidelines for reimbursement of Legislative Council Members' operating expenses

Purpose

This paper reports on the consultation results regarding the proposed revision of the procurement provisions in the guidelines for reimbursement of Legislative Council Members' operating expenses, and seeks the endorsement from the Committee on Members' Interests ("CMI") for the implementation of the proposed revisions.

Background

2. On 28 December 2009, allegations appeared in press reports concerning Hon LEUNG Kwok-hung's claims for reimbursement of operating expenses related to insurance bought through his part-time employee who was an agent of the insurance company concerned. On 30 December 2009, a complaint on the same matter alleging that "LEUNG Kwok-hung had transferred benefits to TANG Yuen-ching [the aforesaid employee] by using public money to take out employees insurance policies through her so that she could earn a 10% commission from the insurance company concerned" (translation) was received through the Legislative Council's redress system. In response to the allegations, the Secretary General ("SG") examined the reimbursement documents as well as the reimbursement guidelines, and reported to CMI on 1 February 2010 her findings and recommendations.

3. After studying the facts of the case as contained in SG's report and deliberations on the complaint, CMI submitted its report to the Legislative Council on 26 May 2010. Amongst other things, CMI supported SG's recommendations to improve the provisions and declarations forms in *A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council* ("Reimbursement Guide"). CMI also recommended that the Legislative Council Secretariat should devise a mechanism whereby Members and their staff would be consulted on the changes proposed to the Reimbursement Guide before they were implemented.

4. To implement the recommended improvements, the Legislative Council Secretariat consulted all Members through a questionnaire on the proposed modifications to the Reimbursement Guide in September 2010 (LC Paper No. AS338/09-10). The proposed modifications comprise the following:

- (a) Neither a Member nor his/her staff, nor any of the relatives of a Member or his/her staff, should derive or be able to derive any financial benefits from any transaction for which reimbursement of expenses is claimed (*paragraph 60 of the Reimbursement Guide—see Appendix I*);
- (b) Where a conflict of interest situation has come to the knowledge of a Member, the Member should reassign the procurement task to another staff member (*paragraph 60 of the Reimbursement Guide—see Appendix I*);
- (c) If a similar quotation exercise was conducted within the past three months, the requirement to obtain three quotations for price and performance comparison (in procurements involving more than \$20,000) could be waived (*paragraph 61 of the Reimbursement Guide—see Appendix I*); and

- (d) Separate declaration forms should be used for (i) procurement situations involving conflict of interest (*Declaration Form IV(a)*—see **Appendix II**) and (ii) procurement exceeding \$20,000 (*Declaration Form IV(b)*—see **Appendix III**).

5. Up to 8 November 2010, 52 Members out of 60 had replied. Members' responses to the proposed modifications are tabulated in **Appendix IV** and summarized below.

Consultation results

6. As shown in Appendix IV, 96% of respondents supported the principle stated in Q.1 that a Member, his/her staff, or any of their relatives, should not derive or be able to derive any financial benefits from any transaction for which reimbursement of expenses was claimed. If the conflict of interest situation mentioned in Q.1 could not be avoided, 98% of respondents agreed that the Member/staff should declare interest and obtain at least three quotations for price and performance comparison; and if three quotations could not be obtained, the Member should give justifications for departing from the procurement guidelines contained in the Reimbursement Guide. (Q.2) One Member disagreed with the principles in Q.1 and Q.2. One Member neither fully agreed nor disagreed with the principle stated in Q.1. In respect of the latter, he supported the principle that a Member, his/her staff, spouse, children should not derive any financial benefits from a transaction. But he questioned why quality products at a low price could not be bought from a non-direct relative if such products could pass the required procurement procedures.

7. All respondents agreed that where a conflict of interest situation as referred to in the Code of Conduct for Staff Employed by Legislative Council Members (Appendix III to the Reimbursement Guide) had come to the knowledge of the Member, the Member should not allow the staff member concerned to continue to deal with the procurement. The Member should reassign the task to another staff member. (Q.3)

8. On the question of whether the revised paragraph 60 (Appendix I) is clear enough to explain the requirements set out in Q.1, Q.2 and Q.3, 86% of respondents replied in the affirmative, 10% abstained, while 4% gave a negative response without elaborating further. (Q.4)

9. All respondents agreed that paragraph 61 of the Reimbursement Guide should be revised so that the requirement to obtain three quotations for any purchase over \$20,000 should be waived if a similar quotation exercise was performed within the last three months. (Q.6)

10. On the question of whether the revised paragraph 61 (Appendix I) is clear enough to explain the change set out in Q.6, 90% of respondents answered in the affirmative and 10% abstained. (Q.7)

11. As regards Q.5 and Q.8, where Members were invited to give their views on whether Declaration Form IV(a) (Appendix II) and Declaration Form IV(b) (Appendix III) were comprehensive enough to enable Members/staff to comply with paragraphs 60 and 61 respectively, 90% of respondents answered in the affirmative and 10% abstained.

Advice sought

12. In view of a great majority support for the proposed revisions of the Reimbursement Guide, members are invited to endorse the proposed revisions.

* * * * *

Administration Division
Legislative Council Secretariat
22 November 2010

Procurement

60. A Member or his/her staff should not engage a supplier or service provider whose business he/she or any of his/her relatives has a financial interest in or control of. Neither should a Member nor his/her staff, nor any of the relatives of a Member or his/her staff, derive or be able to derive any financial benefits from any transaction for which reimbursement of expenses is claimed. If this cannot be avoided, the Member should obtain at least three quotations for price and performance comparison (whenever practicable), declare interest and document the justifications for doing so (e.g. sole supplier, more competitive price from bulk purchase), using **Declaration Form IV(a)**. Where a conflict of interest situation as referred to in the Code of Conduct for Staff Employed by Legislative Council Members (Appendix III)^(note) has come to the knowledge of a Member, the Member should not allow the staff member concerned to continue to deal with the procurement. The Member should reassign the task to another staff member. If no reassignment is arranged, the Member must provide written explanation to justify that the most cost-effective procurement procedures have been adopted.

61. For procurement of goods or services above \$20,000, including a contract commitment or renewal of insurance policy costing more than \$20,000, Members should obtain at least three quotations for price and performance comparison, unless a similar quotation exercise was performed within the last three months. These quotations should be in written form whenever practicable. **Declaration Form IV(b)** should be submitted when reimbursement is claimed.

^(note) Please see *Reimbursement Guide*—not attached here.

DECLARATION OF PROCUREMENT
INVOLVING CONFLICT OF INTEREST SITUATIONS

(A Member, his/her staff or any of their relatives should not have a financial interest in or control of the business of the supplier/service provider. Neither should any of them derive or be able to derive any financial benefits from a transaction for which reimbursement of expenses is claimed. If that could not be avoided, justification and declaration are required.)

Name of Member	
<i>PROCUREMENT PARTICULARS</i>	
Product or Service procured	
Date of Procurement	
Supplier/Service provider	
<i>SECTION I: DECLARATION (to be completed by the person who or whose relative (a) has a financial interest in or control of the business of the supplier/service provider, and/or (b) derives or can derive financial benefits from the transaction)</i>	
Nature of relationship with the supplier/service provider:	
<input type="checkbox"/> The Member is a(n) <i>relative/shareholder/partner/business associate/employee*</i> (for other relationships, please specify) _____ of the supplier/service provider.	
<input type="checkbox"/> The Member's relative (relationship: _____) is _____ of the supplier/service provider.	
<input type="checkbox"/> The staff member (name: _____) is _____ of the supplier/service provider.	
<input type="checkbox"/> The staff member's relative (relationship: _____) is _____ of the supplier/service provider.	
Nature of financial interest/benefit accrued to the <i>Member/staff/Member's or staff's relative*</i> and the total amount involved: _____	
_____ Name	_____ Signature
_____ Date	

✓ as appropriate

* delete where inappropriate

SECTION II: JUSTIFICATION FOR DECISION AND DECLARATION (to be completed by person(s) making the procurement decision, such person(s) should, as far as possible, not be the one(s) completing Section I)

A. Justification for decision

(1) Are you aware of the financial interest above before making the procurement decision? *Yes / No**

(2) Did you obtain three quotations before making the procurement decision? *Yes / No**

(a) If yes, please provide details of the quotations

Quotations obtained <i>(Note 1)</i>	Quotation 1	Quotation 2	Quotation 3
Date			
Supplier/Service provider			
Means of obtaining quotations (e.g. by telephone, shopping, tender) and contact details <i>(Note 2)</i>			
Description of items offered (e.g. make/model)			
Price			
Decision	<i>Accepted/ Rejected*</i>	<i>Accepted/ Rejected*</i>	<i>Accepted/ Rejected*</i>

(b) If no, please state below the reasons for not obtaining three quotations:

(3) The procurement decision is based on consideration of the following:

- price service/support
- quality/functions convenience
- availability other reasons: _____

(Note 1) For compliance audit purposes, relevant documents should be kept for at least two years after completion of the procurement exercise.

(Note 2) If by telephone enquiry, state contact person and telephone number. If by shopping, the shop address should be stated.

B. Declaration

- (1) I/We and my/our relatives have no financial interest in, nor control of, the business of the supplier/service provider.
- (2) I/We and my/our relatives derive no financial benefits from the transaction. Neither can any of us derive any financial benefits from the transaction.

Decision-maker
(A)

Name	Position/ Capacity	Signature	Date
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Decision-maker
(B)

Name	Position/ Capacity	Signature	Date
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** (Detailed assessment, if any, is shown in the attached, which can be/should not be* open for public inspection.)*

SECTION III - DECLARATION (to be completed by Member)

I hereby certify that:

- (i) To the best of my knowledge and belief, the above procurement complies with A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council;
- (ii) **I and my relatives have no financial interest in, nor control of, the business of the supplier/service provider;*
- (iii) **I and my relatives derive no financial benefits from the transaction. Neither can any of us derive any financial benefits from the transaction; and*
- (iv) **The supplier/service provider is not a business associate of mine nor an organization to which I am affiliated; or*
- (v) **The supplier/service provider selected is a business associate of mine or an organization to which I am affiliated. Nonetheless, my procurement decision is made in the public interest.*

**In spite of the financial interest/benefit involved as stated in Section I, the procurement decision is unavoidable for the following reasons (e.g. sole supplier for the goods/services required; lower prices from using bulk contracts of an affiliated association):*

Signature of Member

Date

PROCUREMENT EXCEEDING \$20,000

(In any procurement situations where the Member, his/her staff or any of their relatives has a financial interest in or is in control of the business of the supplier/service provider, or if any of them derives or can derive a financial benefit from the transaction, Declaration Form IV(a) should be used.)

Name of Member			
SECTION I – PROCUREMENT PARTICULARS <i>(Note 1)</i>			
Product or Service procured			
Quotations obtained <i>(Note 2)</i>	Quotation 1	Quotation 2	Quotation 3
Date			
Supplier/Service provider			
Means of obtaining quotations (e.g. by telephone, shopping, tender) and contact details <i>(Note 3)</i>	<input type="checkbox"/> see attached <i>(Note 2)</i>		
Description of items offered (e.g. make/model)			
Price			
Decision	<i>Accepted/ Rejected*</i>	<i>Accepted/ Rejected*</i>	<i>Accepted/ Rejected*</i>

✓ as appropriate * delete where inappropriate

(Note 1) Three quotations should be obtained in respect of any procurement exceeding \$20,000. For compliance audit purposes, relevant documents should be kept for at least two years after completion of the procurement exercise.

(Note 2) If no new quotations have been obtained owing to reliance on a similar quotation exercise conducted within the past three months, a copy of the previous Declaration Form IV(b) concerned should be attached for reference, and the relevant supporting quotation documents should be kept for at least two years after completion of this procurement.

(Note 3) If by telephone enquiry, state contact person and telephone number. If by shopping, the shop address should be stated.

SECTION II - JUSTIFICATION FOR DECISION

The decision is based on consideration of the following:

- price
- service/support
- quality/functions
- convenience
- availability
- other reasons: _____

** (Detailed assessment, if any, is shown in the attached, which can be/should not be* open for public inspection.)*

SECTION III - DECLARATION (by person(s) making the procurement decision)

I/We* hereby certify that the above information is correct.

Decision-maker (A) _____
Name Position/ Capacity Signature Date

Decision-maker (B) _____
Name Position/ Capacity Signature Date

SECTION IV - DECLARATION (by Member; leave blank if the Member, being the decision-maker or one of the decision-makers, has already signed in SECTION III)

I hereby certify that the above information is correct.

Signature of Member Date

**Results of the consultation
on the proposed revision of the procurement provisions
in the Reimbursement Guide**

	Agree	Disagree	Abstain
	No. (%)	No. (%)	No. (%)
Q.1 In a procurement situation, a Member, his/her staff, or any of their relatives, should not derive or be able to derive any financial benefits from any <u>transaction</u> for which reimbursement of expenses is claimed.	50 96%	1 2%	1* 2%
Q.2 If the conflict of interest situation mentioned in Q.1 above cannot be avoided, the Member/staff should declare interest and should obtain at least three quotations for price and performance comparison. If three quotations cannot be obtained, the Member should give justifications for departing from the procurement guidelines contained in the Reimbursement Guide.	51 98%	1 2%	- -
Q.3 Where a conflict of interest situation as referred to in the Code of Conduct for Staff Employed by Legislative Council Members (Appendix III to the Reimbursement Guide) has come to the knowledge of the Member, the Member should not allow the staff member concerned to continue to deal with the procurement. The Member should reassign the task to another staff member.	52 100%	- -	- -
Q.4 The revised paragraph 60 is clear enough to explain the requirements set out in Q.1, Q.2 and Q3.	45 86%	2 4%	5 10%

** The Member remarked that a Member, his/her staff, spouse, children should not derive any financial benefits from a transaction. But he questioned why quality products at a low price could not be bought from a non-direct relative if such products could pass the required procurement procedures.*

	Agree	Disagree	Abstain
	No. (%)	No. (%)	No. (%)
Q.5 Revised Declaration Form IV(a) is comprehensive enough to enable Members/staff to comply with paragraph 60 of the Reimbursement Guide.	47 90%	- -	5 10%
Q.6 The current Reimbursement Guide requires that, for procurement of goods or services above \$20,000, including a contract commitment or renewal in insurance policy costing more than \$20,000, Members should obtain at least three quotations for price and performance comparison. The proposed revision to paragraph 61 is to allow this requirement to be waived if a similar quotation exercise was performed within the last three months.	52 100%	- -	- -
Q.7 The revised paragraph 61 is clear enough to explain the change set out in Q.6	47 90%	- -	5 10%
Q.8 Revised Declaration Form IV(b) is good enough to enable Members/staff to comply with paragraph 61 of the Reimbursement Guide.	47 90%	- -	5 10%