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Legislative Council

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Committee on Members' Interests **Paper for the ninth meeting on 23 April 2012**

Review of the procedure for handling complaints in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses

Purpose

This paper invites members to consider proposed changes to "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" in the light of the experience of the Committee on Members' Interests ("CMI") in the current Term of Legislative Council ("LegCo").

Background

2. Under Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP"), CMI is empowered to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so, or any complaint made in relation to Members' claims for reimbursement of operating expenses ("OER") or applications for advance of operating funds; and, if it thinks fit after consideration, investigate such complaint.

3. To ensure fairness to a Member under complaint and the complainant as well as to guard against abuse or favoritism by a dominant party in the Council when CMI deals with such complaints, a detailed procedure entitled "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") has been put in place since the First LegCo. The current version of the Procedure, which primarily was the version adopted by the First LegCo, was endorsed by CMI at its meeting on 2 January 2009 and issued to Members on 14 January 2009.

4. In the current Term, CMI has handled a number of complaints against Members. In the course of its work, CMI found some of the steps set out in the Procedure quite confusing and considered that a review of the Procedure ought to be conducted having regard to its experience gained in handling these complaints.

The Procedure

5. A copy of the current version of the Procedure is in **Appendix I**. Its main features are:

Decision on whether to take action on a complaint

- (a) All written complaints against Members about the registration or declaration of interests of a Member or a Member's claims for OER shall be distributed to all CMI members after receipt. It is for the Chairman to decide whether a meeting should be held for the purpose of considering a complaint having regard to a number of criteria set out in the Procedure. If the Chairman decides not to hold such a meeting and no majority of members have indicated disagreement, no further action will be taken. If there is a majority of members in support of holding a meeting despite the Chairman's decision of not holding one, the Chairman shall fix the date, time and venue for a meeting;

Two-stage approach in handling complaints

Preliminary consideration stage

- (b) CMI first proceeds to the preliminary consideration stage, during which CMI ascertains the subject of the complaint, identifies the provisions of RoP relevant to the allegations in question, and gathers information relevant to the complaint and the allegations in question. During the preliminary consideration stage, CMI may invite the complainant to attend a meeting to provide information. CMI may also invite the Member under complaint to attend a meeting to

give explanations and to provide information. On the basis of the information gathered, CMI will then decide whether to proceed to the investigation stage. If the Member under complaint admits all the allegations and if CMI considers the complaint substantiated, CMI may conclude its consideration and report to LegCo with a recommendation on whether, and if so which, sanction is to be imposed under Rule 85 of RoP;

Investigation stage

- (c) If CMI decides that an enquiry is necessary, it will proceed to the investigation stage. In the course of the enquiry, CMI may summon any person to appear before CMI to give evidence;

Review of decision and tabling of report at LegCo

- (d) If CMI decides that the complaint is substantiated, it will so inform the complainant and the Member under complaint. The Member under complaint may seek a review of the decision and may submit further information to CMI. After the review, if CMI is of the opinion that the complaint is substantiated, it will present a report to LegCo and make a recommendation as to a sanction under Rule 85 of RoP; and
- (e) If CMI is of the opinion that the complaint is not substantiated, it will convey the decision to the complainant and the Member under complaint. CMI may decide whether a report to LegCo should be submitted.

Issues for consideration

6. In the course of considering the complaint cases in the current Term, some members indicated that the following procedural arrangements in the Procedure ought to be reviewed:

- (a) Some of the time limits set out in the Procedure are not realistic and may cause operational difficulties to CMI;
- (b) The purpose of the first meeting is unclear and the holding of the first meeting does not necessarily mean that the handling of a complaint has entered the preliminary consideration stage; and

- (c) The description of the procedural steps for the preliminary consideration stage is confusing.

Time limits for the various steps in the Procedure

7. The following time limits are specified in the Procedure:

Paragraph No.	Procedural Step	Time Limit
1	The Chairman to decide whether a meeting should be held to consider the complaint	2 working days from the date of asking by the Clerk
3	The first meeting to be held following the Chairman's decision that a meeting should be held to consider the complaint	7 working days from decision of the Chairman
4	CMI members to indicate whether to support the holding of a meeting if the Chairman decides not to hold a meeting	3 working days from the Clerk's circular
18	The meeting to be held to hear explanation by the Member under complaint upon receipt of request for a review of CMI's decision on the case	7 working days from the date of request

8. The above time limits were first adopted by CMI of the First LegCo and have not been changed since. The main consideration for setting out in detail a time limit for deciding whether action should be taken on a complaint was to guard against abuse by a dominant party in the Council and to cater for the most antagonistic situation.

9. Experience shows that with the exception of the time limits in Paragraphs 1 and 3 of the Procedure, the time limits set out in the Procedure appear to be appropriate. For the time limit for the Chairman to decide on whether a meeting should be held to consider the complaint (Paragraph 1), it is found that two working days is not adequate to reach

and get a response from the Chairman especially when he/she is not in Hong Kong. As regards the time limit for convening the first meeting (Paragraph 3), it is noticed that it is not always easy to find a time convenient to most members of CMI for the first meeting and there is a need to relax the current time limit of seven working days to a longer period, say, within ten working days, considering that a complaint may be received during a break or recess period of LegCo and there may be a need for the Clerk to clarify some basic facts with the complainant.

Purpose of First Meeting

10. The first meeting to consider the complaint is normally held to decide whether the complaint is pursuable. In making this decision, members will review the content of the complaint letter and if the information is insufficient for CMI to decide whether to pursue the complaint, CMI may decide to gather additional information relevant to the complaint and the allegations in question. This task is usually done by the Clerk who acts upon the instruction of CMI. It is therefore necessary to stipulate in the Procedure that the purpose of the first meeting is for CMI to decide whether the complaint is to be pursued by proceeding to the preliminary consideration stage by taking into account of the following:

- (a) information, including alleged facts, contained in the complaint;
- (b) the provisions of RoP relevant to the allegations in question; and
- (c) any other matters (including any additional information beyond that contained in the complaint) which the Committee considers relevant for making the decision.

11. In considering a complaint relating to a Member's claims for OER, CMI shall, in addition to any other matter that CMI may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.

12. At the first meeting, if CMI decides that the complaint is pursuable, CMI may proceed to the preliminary consideration of the complaint. If CMI decides that the complaint is not pursuable, no further action is to be taken and the complainant will be informed accordingly.

13. As to whether the Member under complaint ought to be informed if CMI decides not to consider the complaint, there is at present no

provision in the Procedure on whether a Member under complaint should be so informed. Some members have expressed the view that this matter should be decided by CMI on a case-by-case basis given that some complaints may be frivolous and vexatious and not every Member wishes to be informed of such complaints made against him. There may be a need to make this point clear in the Procedure and the decision on whether information on the complaint should be disclosed to the Member under complaint is to be made at the first meeting or any subsequent meeting at which CMI decides not to consider the complaint.

Procedure to deal with admission to allegations by Member under complaint

14. Under Paragraph 11 of the Procedure, if the Member under complaint admits to all the allegations made in a complaint at the preliminary consideration stage and CMI is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, CMI shall report to LegCo and make a recommendation as to the sanction to be imposed on the Member under complaint. This stipulation was modeled on the practice in the United Kingdom House of Commons when the Procedure was first made by the First LegCo. In the light of the experience from the handling of a recent case, some members of CMI find this procedure unclear as to whether CMI ought to proceed to the investigation stage if CMI is able to form the opinion that the complaint is substantiated at the preliminary consideration stage, but the Member under complaint does not admit the allegations or agree to CMI's opinion.

15. To set out the procedure more clearly, a revised set of procedure for preliminary consideration is proposed at Part 2 of the revised Procedure at **Appendix II**. Major changes in the revised version are as follows:

- (a) to inform the Member under complaint the allegation(s) made against him, the rule(s) relevant to the allegation(s) and to invite him to provide information in response to the complaint to facilitate CMI's consideration of whether the allegation(s) is substantiated;
- (b) to list out what CMI may do during the preliminary consideration stage; and
- (c) to make it clear that CMI will proceed to investigation stage if there is any disagreement between CMI and the Member under complaint over the facts upon which CMI forms the opinion that the complaint is substantiated.

Advice sought

16. Members are invited to consider the following:
- (a) whether the time limit stipulated in Paragraph 1 of the Procedure for the Chairman to decide whether a meeting (the first meeting) should be convened to consider a complaint should be changed from two working days to three working days;
 - (b) whether the time limit stipulated in Paragraph 3 of the Procedure for convening the first meeting to consider a complaint should be relaxed to allow the Chairman to convene that meeting on a day beyond the next seven working days but within ten working days after the Chairman has decided such a meeting should be convened;
 - (c) whether the purpose of the first meeting or the first series of meetings to consider the complaint prior to deciding whether to proceed to the preliminary consideration stage should be spelt out in the Procedure as described in paragraph 10 above;
 - (d) whether the changes to the procedural steps for preliminary consideration stage as proposed in Part 2 of Appendix II should be adopted with or without modifications;
 - (e) whether other textual changes to the Procedure as proposed in Appendix II should be adopted; and
 - (f) whether Members and/or the Committee on Rules of Procedure should be consulted before CMI finalizes the proposed changes.

Council Business Division 3
Legislative Council Secretariat
20 April 2012

**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.

Draft

**The Procedure of
The Committee on Members' Interests
for Handling Complaints**

? 2012

The Procedure of the Committee on Members' Interests for Handling Complaints

(This procedure applies to complaints which fall within the Terms of Reference of the Committee on Members' Interests as provided in Rule 73 of the Rules of Procedure of the Legislative Council, namely those in relation to the registration or declaration of Members' interests, and Members' claims for reimbursement of operating expenses and applications for advance of operating funds.)

Part 1 - 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 a matter which falls within those provided, as part of the Committee's Terms of Reference, in Rule 73 (1)(c) and (ca) of the Rules of Procedure ("RoP"), 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 ask the Chairman of the Committee ("the Chairman") to decide within three working days whether a meeting on the matter should be held. For the purposes of this Procedure, in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, reference to the Chairman is taken to mean the Deputy Chairman.
- (2) The Committee will not consider the complaint, if it is (i) made by an anonymous or unidentifiable person or by a person who cannot be contacted, or (ii) made against a former Member, or (iii) 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 distribute the complaint to other members in the form of a confidential document for information.

- (3) 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 outside the scope of complaints referred to in Rule 73 (1)(c) and (ca) of RoP, i.e. in relation to the registration or declaration of a Member's interests, or a Member's claim for reimbursement of operating expenses or application for advance of operating funds;
 - (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 factual information not available before is produced; and /or
 - (d) other reasons he deems appropriate.
- (4) If the Chairman decides not to hold such a meeting, he has to convey to the Clerk his decision as well as his reasons for making such a decision. The Clerk shall then inform other members of the Chairman's decision and his reasons by way of a circular. If any member wishes to indicate disagreement with the decision, the member should do so by informing the Clerk in writing. Upon receipt of an indication of disagreement, the Clerk shall consult the Chairman and invite other members by way of a circular to indicate on a reply slip within three working days from the date of the circular on whether a meeting should be held to consider the complaint. Where it is ascertained from the responses that there is a majority of members indicating support for holding a meeting, the Clerk shall ask the Chairman to determine the date, the time and the venue of the meeting. That meeting shall be held within ten working days of the Chairman's determination or any further period as considered appropriate by the Committee.
- (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.
- (6) 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 ten working days or a period as considered appropriate after consulting all members.

- (7) The purpose of the first meeting is for the Committee to decide whether the complaint is to be pursued by proceeding to the preliminary consideration stage by taking into account of the following:
- (a) information, including alleged facts, contained in the complaint;
 - (b) the provisions of RoP relevant to the allegations in question; and
 - (c) any other matters (including any additional information beyond that contained in the complaint) which the Committee considers relevant for making the decision.
- (8) In considering a complaint relating to a Member's claims for reimbursement of operating expenses or applications for advance of operating funds, 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) More than one meeting may be held to consider the complaint before the Committee decides whether the complaint is pursuable and should proceed to the preliminary consideration stage.
- (10) If the Committee decides that the complaint is pursuable, the Committee shall proceed to preliminary consideration of the complaint. If the Committee decides that the complaint is not pursuable, no further action shall be taken and the complainant will be informed accordingly. The Committee shall decide on a case-by-case basis whether information on the complaint should be disclosed to the Member under complaint.

Part 2 - Preliminary consideration

- (11) The purpose of preliminary consideration is to determine whether the complaint is substantiated without an investigation.
- (12) The Committee may hold a meeting or a series of meetings to consider the complaint.

- (13) For the purposes of preliminary consideration, the Committee shall inform the Member under complaint in writing of the allegation(s) made against him, the relevant rule(s) of RoP to which the allegation(s) relates and, if the Committee had obtained additional information, such additional information, and invite the Member under complaint to provide information to facilitate the Committee in considering whether the allegation(s) is substantiated. A copy of the Committee's Procedure for handling complaints should be provided to the Member under complaint. The Committee shall also inform the complainant that the complaint is under preliminary consideration by the Committee.
- (14) If, apart from the written response of the Member under complaint, the Committee decides to obtain more information on the subject of the complaint, it may do any or all of the following:
- (i) to invite the Member under complaint to attend a meeting(s) to give explanations and provide information;
 - (ii) to invite the complainant to attend a meeting(s) to provide information; and
 - (iii) to gather information available in the public domain which is relevant to the complaint and the allegations in question, such as 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.
- (15) 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.
- (16) If the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an investigation is not necessary, the Committee shall inform the Member under complaint of its findings and invite the Member to comment on the Committee's opinion together with the facts and findings on which the opinion is based. If the Member under complaint does not agree with the Committee's opinion that the complaint is substantiated, the Committee shall proceed to investigation stage.

- (17) If the Member under complaint does not disagree with the Committee's opinion that the complaint is substantiated or the Member admits all the allegations, the Committee may report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint (please go to paragraphs 25 to 27 below).
- (18) If the Committee is of the opinion that the complaint is not substantiated, the Committee may decide not to proceed with an investigation and may decide whether it should submit a report on this to the Council (please go to paragraph 28 below).
- (19) If there is any disagreement between the Committee and the Member under complaint over the facts relating to the complaint, or if the Member under complaint wishes to produce new information and/or further written statements to the Committee for its consideration, the Committee shall proceed to the investigation stage if it considers that other persons ought to be invited to assist in the investigation or review its earlier opinion at the review stage as referred to in paragraph 26 below.

Part 3 - Investigation

- (20) If the Committee decides that an investigation should be conducted into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint.
- (21) In the course of conducting an investigation, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend a hearing 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.

- (22) 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 a hearing 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.
- (23) Upon completion of the investigation, the Committee may invite the Member under complaint to comment on the facts and findings of the Committee obtained from the investigation. The Committee shall consider any comments made by the Member under complaint in finalizing its conclusion and report on the case.

Part 4 - Suspension of work on the complaint

- (24) 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.

Part 5 - The Committee's decision as to whether a complaint is substantiated

- (25) If the Committee decides that a complaint is substantiated after the preliminary consideration of the complaint under Part 2 or after investigation of the complaint under Part 3, it shall inform the complainant and the Member under complaint of its decision.

- (26) Upon receipt of the Committee's decision referred to in paragraph 25 above, the Member under complaint may make a request in writing to the Committee for a review of the Committee's decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable during the preliminary consideration or investigation of the complaint. 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.
- (27) 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 its opinion and the relevant facts or evidence upon which its opinion is based 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 RoP. 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 RoP was due to an honest mistake on his part.
- (28) 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 information or documents provided or produced to the Committee during meetings of the Committee held in public and evidence taken at hearings before the Committee held in public.

Part 6 - Confidentiality Requirement

- (29) 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 information and documents provided or produced to the Committee, evidence taken at hearings before the Committee in the investigation of a complaint, or the Committee's deliberations and decisions before it 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 RoP, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.
- (30) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 25, 27 or 28, 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.
- (31) 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.
- (32) The transcript of evidence taken at hearings held in public shall be published in full and form part of the report of the Committee.

Part 7 - Participation of members in the deliberations of the Committee

- (33) 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.