

# 立法會

## *Legislative Council*

LC Paper No. CMI 39/11-12

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

### **Committee on Members' Interests**

**Paper for the 10<sup>th</sup> meeting on 29 May 2012**

### **Further report on the study of the feasibility of appointing a Commissioner to handle complaints against Members**

#### **Purpose**

This paper invites members to consider further the proposal of appointing a Commissioner to handle complaints against Members in their capacity as such.

#### **Background**

2. At its meeting held on 23 April 2012, the Committee on Members' Interests ("CMI") continued to discuss the proposal of appointing a Commissioner to handle complaints against Members in their capacity as such (LC Paper No. CMI/34/11-12). Members agreed that an independent person should be appointed as Commissioner to receive and investigate complaints relating to registration and declaration of Members' interests, and claims for reimbursement of operating expenses ("OER") and applications for advance of operating funds which are under the remit of CMI, to address the public criticism about Members conducting investigation into complaints against their fellow legislators. It is envisaged that the Commissioner, after completion of his investigation, would report to CMI which would have the responsibility to review the Commissioner's findings before submitting its own recommendations and conclusions to the Council. The Commissioner should also examine the views about Members received by the Complaints Division of the Legislative Council ("LegCo") and advise CMI on matters of ethics relating to the conduct of Members in their capacity as such. The Commissioner should advise CMI if the current guidelines ought to be modified or enhanced. Members also agreed that the Commissioner should provide advice to Members and the Secretariat on matters relating to conflicts of interests.

3. In considering the Commissioner's role, Members agreed that the person appointed should be an officer of the Council <sup>1</sup>, preferably appointed by the President upon the passing of a motion in the Council on the recommendation of the LegCo Commission which will take into account the views of CMI. The Commissioner should be appointed on a four-year term with the possibility of one renewal. To ensure continuity of services to the Council, the four-year term of office of the Commissioner should commence in the second or third legislative session of the Term. As the workload of the Commissioner cannot at present be assessed, the Commissioner should first be appointed on a part-time basis to work for a fixed number of hours per week and as and when required (paragraphs 14 to 16 of LC Paper No. CMI/34/11-12 refers, an extract of which is in the **Appendix**).

4. To assist CMI in considering the matter further, members agreed to seek the advice of Sir Malcolm Jack, the retired Clerk of the House of Commons of the Parliament of the United Kingdom ("UK"), on what needs to be addressed for the implementation of the proposal of appointing a Commissioner in LegCo.

#### **Advice from Sir Malcolm Jack**

5. Sir Malcolm Jack was fully briefed on the background of CMI's current study on the proposal of appointing a Commissioner to conduct investigation of complaints against Members on matters which fall within the remit of CMI before he met members of CMI at an internal meeting on 24 April 2012. Sir Malcolm had provided a confidential advice paper in advance of that meeting.

6. Sir Malcolm Jack considers that the appointment of an independent officer of the Council as Commissioner to handle complaints against Members' conduct in their capacity as such would help to instill public trust in the handling of complaints against Members. He notes that CMI has no jurisdiction over the investigation of Members' conduct and the former LegCo had twice debated and negated proposals to authorize CMI to expand its terms of reference to cover the conduct of Members in their capacity as such. In his opinion, it would be very difficult for the Commissioner to carry out his work in the absence of a code of conduct for Members because the present provisions in the Rules of Procedure ("RoP") are in too general a form to provide clear guidance and also because there will be an expectation from the public that the Commissioner would also deal with wider matters relating to the conduct of Members as well. In view of the difficulty for LegCo to agree on a code of conduct for Members,

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<sup>1</sup> Under section 2 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), officer of the Council means the Clerk or any other officer or person acting within the precincts of the Chamber under the orders of the President and includes any police officer on duty within the precincts of the Chamber.

the most practicable approach is to adopt a phased approach by first entrusting in the Commissioner the investigation responsibility which CMI undertakes at present, and requiring the Commissioner to report to CMI. In the meantime, the Commissioner may, through reviewing the views received by the Complaints Division on the conduct of Members, advise CMI on whether a code of conduct can be put in place. Sir Malcolm Jack also notes that under the RoP there are other committees which may also undertake investigations of complaints against Members in respect of their conduct, such as select committee ("SC"), and the investigation committee ("IC") established under Rule 49B (2A) (Disqualification of Member from Office of the Rules of Procedure). He considers that these provisions should be the subject of a more comprehensive review of the mechanism in handling allegations against Members. It might be more advisable not to involve the Commissioner in these areas of work pending the outcome of the comprehensive review and agreement among Members on what should be done. The timing on when LegCo could move towards expanding the terms of reference of CMI and the duties of the Commissioner to consider complaints against other types of misconduct of Members would hinge on whether there is a broad consensus among Members for putting in place a formal code of conduct for Members covering all aspects of their public life, such as that exists in the UK House of Commons.

7. While the independence of the Commissioner is important, Sir Malcolm Jack considers that the Commissioner's method of proceeding needs to be specified in a clearly set out system based on the receipt of a specific complaint so as to avoid any notion of roving, "fishing" expeditions on his part. The duties of the Commissioner and the oversight role of CMI of the work of the Commissioner should be set out clearly in the RoP.

### **Analysis of the appointment of a Commissioner to handle complaints against Members in LegCo**

8. A common problem with the existing mechanisms for handling complaints against Members is that investigations conducted by CMI, SC and IC are often perceived by the public as Members investigating allegations against Members themselves. This might affect the credibility not only of the committees which comprise only Members but also that of the Council. Thus, the appointment of an independent person as Commissioner to receive and investigate complaints relating to registration and declaration of Members' interests, and claims for OER and applications for advance of operating funds, i.e. those investigative functions within the remit of CMI, should be seen as an important first step to address the problem of the public perception of the way the existing system works.

9. Although CMI should have oversight of the work of the Commissioner, CMI should not involve itself in deciding whether a case received should be

followed up as well as in the investigation process. The Commissioner should independently collect information from the complainant and/or the Member concerned in deciding whether a complaint ought to be further investigated. Where an investigation is to be promulgated, the procedural steps devised by CMI would have to be followed and CMI ought to be duly informed. The Commissioner should report his findings to CMI, which should in turn decide whether or not to accept the findings in the report. In the course of investigation, the Commissioner should have access to legal advice. Upon the completion of the review of the Commissioner's report, CMI may recommend any sanction to be imposed on the Member under complaint under Rule 85 of RoP in a report to the Council.

10. Based on the number of substantive cases handled by CMI in this legislative Term, it is proposed that the Commissioner will work on a part-time basis for a fixed number of hours per week and as and when required to receive and investigate complaints and to provide advice to Members and their assistants as well as Secretariat staff on the interpretation of the relevant Rules of RoP and the compliance of these Rules. The Commissioner may also advise CMI on any modifications to the existing "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" after reviewing views on Members received by the Complaints Division.

11. To avoid any possible conflict of interests, the maintenance and monitoring of the operation of the Register of Members' Interests should be made the responsibility of a specified Officer of the Secretariat who would also be available to advise Members, working closely with the Commissioner's office.<sup>2</sup>

### **Advice sought**

12. Members are invited to consider the analysis set out in paragraphs 8 to 11 above and advise on whether the proposal of appointing a Commissioner should be pursued in the current Term.

Council Business Division 3  
Legislative Council Secretariat  
28 May 2012

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<sup>2</sup> In the UK House of Commons, the Registrar of Members' Financial Interests is a clerk of the House responsible for providing advice to Members on what to be declared or registered, while the Parliamentary Commissioner for Standards tends to see Members only when they are involved in a complaint.

**Suggested arrangements for the proposal of appointing a Commissioner to handle complaints against Members**

*(Extract from LC Paper CMI 34/11-12)*

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14. As the workload of the commissioner is unclear until the position commences and complaints are made, the commissioner may first be appointed on a part-time basis to work for a fixed number of hours per week and as and when required.

**Financial implications**

15. Depending on whether the commissioner will work for a fixed number of hours per week initially and engaged for a designated period for investigating into specific cases as and when required, the following arrangement may be considered:

- (a) a monthly fee computed at 25% of the monthly remuneration of that of a judge in the Court of First Instance, i.e. \$52,525, for working up to, say, 11 hours per week, to review the views about Members received by the Complaints Division and/or to receive enquiries from Members, Members' staff, staff of the Secretariat on matters relating to conflict of interest, registration and declaration of interests and other related matters; and
- (b) where the service of the commissioner is required for investigation into specific cases, he will be paid on an accountable basis a daily rate calculated from the monthly remuneration of a judge in the Court of First Instance which is \$210,500 as at 1 April 2012.

16. As the number of complaint cases requiring investigation in a year should not be high, the work of the commissioner can be supported by existing Secretariat staff initially. The overall financial implication for engaging a commissioner will be in the region of \$800,000 per annum.

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