

立法會

Legislative Council

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Report of the Committee on Members' Interests of the Fourth Legislative Council

Purpose

This report gives an account of the work of the Committee on Members' Interests ("CMI") of the Fourth Legislative Council ("LegCo") during its four-year term from October 2008.

The Committee

2. CMI is a standing committee of LegCo. Its terms of reference are set out in Rule 73(1) of the Rules of Procedure ("RoP").

3. On the recommendation of the House Committee ("HC") and in accordance with Rule 73(2) of RoP, the President of the Council appointed Hon Mrs Sophie LEUNG as the Chairman, Hon Emily LAU Wai-hing as the Deputy Chairman and five Members as members of CMI with effect from 17 October 2008. The membership list is in the **Appendix**.

Complaint cases handled

4. During the term, CMI considered five complaint cases involving 12 Members. A total of 32 closed meetings were held to consider these complaint cases. CMI decided that the allegations made against eight of the Members under complaint were substantiated. The relevant reports were tabled at the Council meetings on 26 May 2010, 13 April 2011, 22 June 2011 and 16 November 2011. In respect of one of the Members under complaint, CMI proposed that the Member be admonished on a motion to that effect under Rule 85 of RoP at the Council meeting on 13 July 2011. The motion was negated after debate.

5. CMI also received six other complaints, but decided that no further action was required on the ground that these complaints were outside the remit of CMI and/or were frivolous or anonymous.

Review of CMI's procedure for handling complaints

Anonymous complaints and allegations in media reports against Members

6. Since the First LegCo, CMI has adopted the practice that it will not deal with anonymous complaints on the ground that there is no one to come forward to provide evidence. Such complaints are circulated to CMI members for information and any member may decide to take over the complaint and lodge the complaint in his own name if the member considers that the complaint contains substantiated information. However, the member who lodges the complaint may not participate, as a member, in the handling of the complaint. In relation to allegations made in media reports, as Rule 73(1)(c) and (ca) of RoP does not empower CMI to act without complaints, CMI may not on its own initiative investigate these allegations unless a specific complaint relating to the allegations is received.

7. At the CMI meeting held on 2 January 2009, some members considered it unsatisfactory for CMI not to take further action on a complaint solely on the ground that the complainant could not be contacted as an anonymous complaint might contain serious allegations against Members. Some members considered that if a certain number of members were of the view that an anonymous complaint was of a serious nature and worth pursuing, CMI should act on the complaint and the Clerk to CMI, upon the advice of the Chairman, should make initial enquiries. The findings should then be presented to CMI to decide whether a detailed investigation should be conducted. Some members considered that notwithstanding the preliminary enquiries conducted by the Clerk, if no person came forward to be the complainant, CMI should not consider the complaint further even if a prima facie case had been established as a result of the initial enquiries. Some CMI members also considered that allegations in media reports should be handled in the same manner as anonymous complaints. At its meeting on 21 April 2009, CMI agreed that all Members should be consulted on the above views.

8. A consultation exercise was conducted in June 2009. The findings in this consultation indicated that while the majority of Members did not consider it appropriate for CMI to deal with anonymous complaints and allegations in media reports, Members also found the present arrangement of not dealing with anonymous complaints not entirely satisfactory; and close to half of all Members were in support of requesting the Secretariat to conduct

initial enquiries into anonymous complaints, including contacting the Member concerned for clarification, if a certain number of CMI members had given consent. As the opinions of Members were divided, CMI decided at its meeting on 16 December 2009 to consolidate the views of Members into a proposal and consult Members further on the arrangements.

9. In the second round consultation conducted in March 2010, CMI sought Members' views on whether anonymous complaints should be dealt with according to the following arrangements: the Secretariat would conduct initial enquiries if five or more CMI members had given consent to it; during initial enquiries, the Member under complaint or subject of the allegation might be contacted for clarifications or explanations; upon completion of initial enquiries, the Secretariat would submit its findings to CMI; and CMI would not take further action unless a pertinent non-anonymous complaint was received or a Member lodged the complaint in his own name to CMI. In addition, Members were asked to give their views on whether RoP should be amended to empower CMI to deal with allegations in media reports and whether such allegations should be dealt with in the same manner as anonymous complaints.

10. The findings of the second round consultation indicated that a majority of Members did not support CMI changing its practice of not considering anonymous complaints and allegations against Members in media reports. CMI therefore decided at its meeting on 7 January 2011 that the existing "Procedure of the Committee on Members' Interests for handling complaints in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses" ("the Procedure") would not be amended.

Procedural steps in handling complaints

11. In the course of handling complaints received during the term, 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. Issues considered by CMI are set out in the ensuing paragraphs.

Time limits

12. Paragraph 1 of the Procedure stipulates that the Clerk should, upon receipt of a complaint, ask the Chairman to decide within two working days whether a meeting on the matter should be held. Paragraphs 3 and 4 of the Procedure further stipulate that the first meeting should be held within seven working days from the day on which the Chairman decides that a meeting

should be held or from the date on which the Chairman's decision of not holding a meeting is overturned by a majority of members. Paragraph 4 also provides that members disagreeing with the Chairman's decision of not holding a meeting should reply to the Clerk within three working days. 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.

13. CMI notes that with the exception of the time limits in Paragraphs 1 and 3 of the Procedure, the time limits 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 are 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 10 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.

14. CMI is of the view that the time limit stipulated in Paragraph 1 of the Procedure that the Chairman must 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; and the time limit stipulated in Paragraph 3 of the Procedure for convening the first meeting should be changed from "within the next seven working days" to "within 10 working days after the Chairman has decided such a meeting should be convened".

Purpose of first meeting to consider complaints

15. According to the Procedure, the first meeting to consider a 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.

16. CMI considers that it is necessary to stipulate in the Procedure that the purpose of the first meeting or the first series of meetings 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.

17. CMI considers that the following issues should be further examined:

- (a) whether information beyond that contained in the complaint should be considered at the first meeting; and
- (b) whether the Member under complaint ought to be informed if CMI decides not to consider the complaint after the first meeting.

Procedural steps in the Preliminary Consideration Stage and Investigation Stage

18. CMI has also studied the procedural steps provided in the Preliminary Consideration Stage and Investigation Stage, and examined the following issues:

- (a) whether the steps to take in the Preliminary Consideration Stage should be more clearly set out; and
- (b) 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.

19. Considering that there might be a need to explore the possibility of appointing a commissioner to take over the investigation role of CMI, as in the case of other overseas legislatures, CMI decided that the issues under consideration should be followed up by the CMI of the Fifth LegCo before proposing changes to the Procedure.

The proposal of appointing a Commissioner to receive and investigate complaints against Members

20. CMI has reviewed the existing mechanisms provided under RoP for dealing with complaints against Members in their capacity as such, i.e. CMI (Rule 73), investigation committee (Rule 49B(2A)) and select committee (Rule 78(1)). CMI notes that these existing mechanisms have the common problem of giving rise to the perception that investigations on Members are conducted by their own numbers who are members of these committees. This may affect the credibility not only of these committees but also that of LegCo. CMI has studied the experience of the Parliaments in the United Kingdom ("UK") and Canada, which appoint an independent commissioner to handle complaints against their Members, and also sought the advice of Sir Malcolm Jack, former Clerk of the UK House of Commons.

21. At its meeting held on 29 May 2012, CMI agreed that as a practical first step to address the problem of Members conducting investigation into complaints against other Members, an independent person should be appointed as Commissioner to take over CMI's existing functions of receiving and investigating complaints relating to registration and declaration of Members' interests, claims for reimbursement of operating expenses ("OER claims") and applications for advance of operating funds ("AOF applications").

22. In June 2012, CMI consulted all Members on its proposal of appointing a Commissioner, including the proposed scope of responsibilities, the role and appointment arrangements of the Commissioner, and the proposed relationship between the Commissioner and CMI.

23. A total of 59 Members, except the President, had responded. Details of the outcome of the consultation are as follows:

- (a) 25 Members (or 42%) agreed to CMI's proposal of appointing a Commissioner and, among these Members, 12 Members (or 20%) suggested that the Commissioner should be appointed upon the passing of a motion in the Council by a four-fifths majority of the Members present;
- (b) 14 Members (or 24%) disagreed with the proposal and the reasons given were: this matter should be dealt with in the next LegCo term; no change should be made to the existing system; and the proposal would cause disputes among Members;
- (c) 11 Members (or 19%) had no comment on the proposal; and

- (d) nine Members (or 15%) did not indicate whether they supported the proposal, but commented that the proposal should be carefully considered and studied and be dealt with in the next LegCo term.

24. The outcome of the consultation and Members' views on the proposal of appointing a Commissioner would be followed up by CMI of the Fifth LegCo.

Review of the requirements for registration and declaration of Members' interests

Declaration of Members' interests in respect of directorships

25. Rule 83A of RoP provides that "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest".

26. In the course of considering a complaint against three Members in relation to their failure to disclose pecuniary interests pursuant to Rule 83A of RoP, CMI deliberated and agreed on the following five principles of how directorships should be regarded for the purpose of complying with Rule 83A ("the five principles"):

- (a) a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project;
- (b) if a company is regarded as having a direct pecuniary interest in a project by virtue of (a) above, a Member who is a director of the company is regarded as having an indirect pecuniary interest in the project;
- (c) there is no distinction between executive directors, non-executive directors and independent non-executive directors ("INEDs") as far as disclosure of pecuniary interest under Rule 83A of RoP is concerned;
- (d) a Member is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of RoP, whether the company of which he is a director has a

pecuniary interest in the matter under consideration by a committee; and

- (e) generally speaking, if a subsidiary of a company ("parent company") has bid for a contract or has been awarded a contract under a project, then, the parent company is regarded as having an indirect pecuniary interest in the project and on this basis, a Member who is a director of that parent company is regarded as having an indirect pecuniary interest in the project.

27. While recognizing that a Member might not have access to the information on the day-to-day operation of a company of which he was an INED, CMI considered that a Member should be vigilant of the potential pecuniary interest which he might have if the nature of the business of the company fell within the scope of the subject matter under consideration by a committee. CMI also considered that it would not cause undue hardship to the Member to find out the nature of business of the subsidiaries of the company of which he was an INED for the purpose of considering if there was any pecuniary interest that he should disclose under Rule 83A of RoP, bearing in mind that to reflect the proper balance between public accountability and privacy of the Member, the Member was only required to disclose the nature of the pecuniary interest. Two CMI members, Hon Paul CHAN and Hon WONG Yung-kan, were of the view that a Member should only be expected to find out the primary nature of business of the major subsidiaries of the company of which he was an INED for the purpose of Rule 83A of RoP.

28. As all Members are required to comply with Rule 83A of RoP, a motion for debate was moved by the Chairman of CMI at the Council meeting of 13 July 2011 to enable Members to express their views on the five principles and other issues in relation to the procedural rules on pecuniary interests. The motion was negatived after debate.

29. At its meeting on 16 March 2012, CMI discussed whether the five principles should be re-visited in view of the voting results of the motion referred to in paragraph 28 above. CMI considered that should a similar complaint case be received by CMI in future, it would be up to the CMI of the day to decide how it should regard directorships for the purpose of disclosing pecuniary interests under Rule 83A of RoP.

Registration of Members' interests

30. Under Rule 83 of RoP, Members are required to furnish to the Clerk to LegCo, in such form as may be approved by the President of LegCo, particulars of their registrable interests not later than the first meeting of each

term and within 14 days of any changes to their registrable interests. The categories of registrable interests are set out in Rule 83(5)¹. Members are also required to provide particulars of their registrable interests in a Registration Form on Members' Interests ("the Registration Form") approved by the President of LegCo.

31. In view of the rising public expectation of the conduct and propriety of Members of LegCo, CMI has conducted a review of the requirements for the registration of Members' interests which have been put in place since 1991 and were initially modelled on those of the UK House of Commons. CMI has studied the recent changes in the UK system to require Members of Parliament to provide more details in registering their paid employment. CMI also notes that although the Executive Council of Hong Kong ("ExCo") has similar categories of registrable interests as LegCo, it is the practice of ExCo Members to provide more details when registering such interests.

32. Having regard to the relevant practices in the UK House of Commons and ExCo, CMI considers that the following changes should be made to the registration requirements to enhance transparency and accountability:

- (a) the nature of work to which the remuneration relates should be provided under "directorships", "remunerated employment, offices, etc." and "clients";
- (b) the estimated amount/value of the sponsorship received by Members or their spouses arising out of the membership of the Council should be provided under "overseas visits";
- (c) more details on the location and usage of the land or property owned by Members (except for self-occupation) should be provided under "land and property". For instance, if a Member owns a residential property in the Central district on Hong Kong Island for rental purpose, such information should be provided; and
- (d) a new category of "remunerated membership of boards, committees or other organizations", for instance, membership of statutory bodies and non-governmental organizations for which an honorarium is payable, should be added.

¹ Eight categories of registrable interests are set out in Rule 83(5). These are: (a) remunerated directorships of companies; (b) remunerated employments, offices, trades, professions or vocations; (c) names of clients to whom Members provide services which arise out of or are related to their membership of the Council; (d) election donations and financial sponsorships; (e) overseas visits; (f) payments, benefits or advantages received from Government or organization of a place outside Hong Kong or from any person who is not a Hong Kong permanent resident; (g) land and property; and (h) shareholdings.

33. CMI also considers that the existing Registration Form should be improved to facilitate Members to report to the Clerk to LegCo particulars of any change to their registrable interests of "directorships", "remunerated employment, offices, etc.", "clients", "shareholdings" and "land and property" within the requisite 14-day time period as required under Rule 83(3) of RoP, so as to better enable the public to monitor whether the requirement in the Rule had been complied with. CMI also considers it appropriate to make changes to the format of the Registration Form to make it more user-friendly and informative.

34. In April 2012, CMI consulted all Members on the proposed changes to the requirements for the registration of Members' interests and on the proposed new format of the Registration Form. The majority of Members agreed to or had no comment on CMI's proposals.

35. To put beyond doubt that Members are not only required to comply with the registration requirements under Rule 83(5) of RoP but also to provide the particulars as required in the Registration Form, CMI considers that the Registration Form should be made a part of RoP.

36. To effect the changes in paragraphs 32, 33 and 35 above, it is necessary to amend Rule 83(1), (2), (3) and (5) of RoP as well as to make consequential amendments to Rule 4(1) of and the Schedule to RoP. CMI sought the views of the Committee on Rules of Procedure ("CRoP") and HC on the proposed amendments to RoP on 12 June 2012 and 22 June 2012 respectively. Both CRoP and HC supported the proposed amendments. The Chairman of CMI will move a motion at the Council meeting of 11 July 2012 to amend Rule 83(1), (2), (3) and (5) of RoP and to make consequential amendments to Rule 4(1) of and the Schedule to RoP for implementation with effect from the Fifth LegCo.

Textual amendments to Rule 73(1)(d) of RoP

37. Under Rule 73(1)(d) of RoP, one of the functions of CMI is to "consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters".

38. At the CMI meeting held on 2 January 2009, Hon Emily LAU, Deputy Chairman of CMI, conveyed the concern of some Members that the Chinese term "道德標準" in the Chinese title of the "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" ("Advisory Guidelines") might be misleading as the Advisory Guidelines only covered matters relating to "standards of conduct (操守標準)" and not "moral standards (道德標準)". Hon Emily LAU proposed that the Chinese version of the term "ethics" be changed from "道德標準" to "操守標準".

39. While CMI agreed that the Secretariat should follow up Hon Emily LAU's proposal, it noted that Rule 73(1)(d) of RoP, under which the Advisory Guidelines were issued, also used the term "道德標準". CMI considered that Rule 73(1)(d) should be amended before the title of the Advisory Guidelines was amended.

40. CMI consulted CRoP and HC on 2 March 2009 and 20 March 2009 respectively on the proposed amendment to Rule 73(1)(d) of RoP to change the Chinese text for "ethics" from "道德標準" to "操守標準". Both CRoP and HC supported the proposed amendment. The motion moved by the Chairman of CRoP to amend Rule 73(1)(d) of RoP to effect the proposed change was passed at the Council meeting of 10 June 2009.

Procurement procedures stipulated in the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council ("Reimbursement Guide")

41. In the course of considering a complaint against a Member for claiming reimbursement of the premium for the employees' insurance policies taken out with an insurance company through his employee who was also an agent of the insurance company, CMI considered that there was room for improvement in the procurement provisions stipulated in the Reimbursement Guide.

42. Rule 73(1A) of RoP provides that CMI shall have regard to the provisions of the Reimbursement Guide in considering or investigating a complaint on OER claims or AOF applications. CMI therefore supported the initiatives of the Secretary General to improve the procurement provisions in the Reimbursement Guide by the following measures:

- (a) neither a Member nor his/her staff, or 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 was claimed (proposed paragraph 60 of the Reimbursement Guide);
- (b) where a conflict of interest situation had come to the knowledge of a Member, the Member should reassign the

procurement task to another staff member (proposed paragraph 60 of the Reimbursement Guide);

- (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 procurement involving more than \$20,000) could be waived (proposed paragraph 61 of the Reimbursement Guide); and
- (d) separate declaration forms should be used for (i) procurement situations involving conflict of interest and (ii) procurement exceeding \$20,000.

43. To implement the recommended improvements to the provisions and declaration forms in the Reimbursement Guide, the LegCo Secretariat consulted all Members on the proposed modifications to the Reimbursement Guide set out above in September 2010. In view of a great majority support for the proposed modifications to the Reimbursement Guide, CMI endorsed the proposed modifications at its meeting held on 7 January 2011. The revised Reimbursement Guide was issued to all Members by the Accounts Office of the LegCo Secretariat on 12 January 2011.

Committee meetings

44. During its term of office, CMI held a total of 42 meetings, including 10 open meetings.

Legislative Council Secretariat
Council Business Division 3
29 June 2012

**Committee on Members' Interests
of the Fourth Legislative Council**

Chairman Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Deputy Chairman Hon Emily LAU Wai-hing, JP

Members Dr Hon Margaret NG (since 26 February 2010)

Hon WONG Yung-kan, SBS, JP

Hon Abraham SHEK Lai-him, SBS, JP

Hon Paul CHAN Mo-po, MH, JP

Hon WONG Sing-chi

Hon Alan LEONG Kah-kit, SC (up to 28 January 2010)

(Total : 7 members)

Clerk Miss Mary SO

Legal Adviser Ms Connie FUNG