

**立法會**  
**Legislative Council**

LC Paper No. AS 298/03-04

Ref: AM12/01/22

**Paper for the House Committee Meeting  
on 18 June 2004**

**Subcommittee to consider  
a mechanism for handling complaints and allegations concerning  
Members' Operating Expenses Reimbursement claims**

**Purpose**

The purpose of this paper is to seek Members' advice on the recommendation of the Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement (OER) claims (the Subcommittee).

**Background**

2. At the House Committee meeting held on 19 December 2003, a Subcommittee was formed to consider the setting up of a mechanism to handle complaints and allegations concerning Members' OER claims. The membership list of the Subcommittee is in **Appendix I**. Under the chairmanship of the Hon Emily Lau, the Subcommittee has held three meetings.

**Need for a mechanism**

3. The Subcommittee considers that, in order to uphold the reputation of the Legislative Council (LegCo) and its Members, it is necessary to put in place a mechanism to handle complaints and allegations concerning Members' OER claims. The proposed mechanism, which, if adopted, should be enshrined in the Rules of Procedure (RoP), is outlined in the ensuing paragraphs.

## **The proposed mechanism**

### Scope

4. The mechanism should deal **only** with complaints and allegations concerning Members' OER claims.

### General principle

5. Deliberations on all cases should be open, fair and above party politics.

6. Having examined the pros and cons of various options, the Subcommittee recommends that the terms of reference of the Committee on Members' Interests (CMI) be expanded to include the monitoring and handling of complaints and allegations concerning Members' OER claims. CMI already has a set of procedures to handle complaints in relation to the registration and declaration of Members' interests. It will be procedurally and operationally simple for it to also handle complaints and allegations concerning Members' OER claims which are not envisaged to be frequent and many. The existing terms of reference and membership of CMI are in **Appendix II**.

7. CMI, being a standing committee of LegCo, may summon the persons concerned to testify or give evidence under the Legislative Council (Powers and Privileges) Ordinance.

8. To ensure fairness and avoid abuse of the mechanism, it is proposed for CMI's consideration that no member of the Committee should participate in the handling of a complaint or allegation, which is made by or against him.

### Other options

9. For Members' information, consideration has also been given to the following three options:

(a) *To appoint an ad hoc committee*

10. An ad hoc committee, such as a Select Committee, has power to summon witnesses when authorized by LegCo by resolution under section 9 of the Legislative Council (Powers and Privileges) Ordinance. However, the main practical problem of this option is the absence of a body to receive and consider complaints and allegations concerning Members' OER claims before the appointment of the ad hoc committee.

(b) *To appoint an independent panel*

11. This option is to set up an independent panel to conduct investigations into complaints and allegations referred to it by a monitoring body made up of LegCo Members. The independent panel will be chaired by a retired judge and composed of two members drawn from a panel of:

- A barrister nominated by the Hong Kong Bar Association
- A solicitor nominated by The Law Society of Hong Kong
- An accountant nominated by the Hong Kong Society of Accountants
- An academic
- A person belonging to other professional

Their appointments are by invitation, and a small honorarium at the same rate as that payable to advisers for panels may be considered.

12. This option is to avoid Members investigating a fellow Member. However, a panel made up of non-LegCo Members does not have the privileges and immunities conferred on LegCo Members under the Legislative Council (Powers and Privileges) Ordinance, such as freedom of speech, immunity from legal proceedings, power to summon witnesses etc. Giving of evidence merely relies on the cooperation of the Member concerned, his/her assistants and the third parties involved. It also entails the setting up of a monitoring body made up of LegCo Members.

(c) *The Legislative Council Commission (LCC)*

13. Legal opinion is that to impose on LCC a duty that goes beyond providing administrative support or services for the Council, or has no relation to its existing functions as stipulated in sections 9 and 10 of The Legislative Council Commission Ordinance, may be subject to legal challenge. Should it be decided as a matter of policy that LCC should be conferred the function of monitoring and investigating complaints and allegations, the more prudent means to achieve this would be to amend the Ordinance by adding such a function and the necessary powers to perform it.

Procedures for handling of complaints and allegations concerning Members' OER claims

14. The Subcommittee has studied the procedures of CMI for handling complaints in relation to the registration and declaration of Members' interests in **Appendix III**. The Subcommittee is of the view that with some adaptation, the procedures can be used for investigating complaints and allegations concerning Members' OER claims.

Investigations conducted in public

15. The Subcommittee recommends that to ensure transparency of the investigations, CMI may wish to consider conducting hearings in respect of complaints and allegations concerning Members’ OER claims in public.

16. For members’ reference, meetings of CMI held for the purpose of conducting investigations into complaints in relation to the registration and declaration of Members’ interests, including those at which hearings are conducted, are conducted in camera. However, hearings are conducted at meetings held in public if the Member under complaint or allegation makes such a request.

17. As regards the investigations conducted by the investigation committee established under Rule 49B(2A) (Disqualification of Member from Office), all meetings are, as a general rule, held in camera.

18. The practice in some overseas legislatures as to whether evidence-taking and deliberations on Members’ misbehaviour are held in public or in camera is as follows:

<b>Parliamentary Commissioner for Standards in the UK’s House of Commons</b>	<b>Committee on Standards of Official Conduct in the US’s House of Representatives</b>	<b>Committee of Privileges in Australia’s House of Representatives</b>	<b>Standing Committee on Procedure and House Affairs in Canada’s House of Commons</b>	<b>Committee of Privileges in Parliament of Singapore</b>
<ul style="list-style-type: none"> <li>• taken in camera</li> </ul>	<ul style="list-style-type: none"> <li>• taken in camera</li> </ul>	<ul style="list-style-type: none"> <li>• taken either in camera or in public</li> </ul>	<ul style="list-style-type: none"> <li>• up to the committee’s discretion;</li> <li>• taken in camera to deal with matters requiring confidentiality</li> </ul>	<ul style="list-style-type: none"> <li>• taken in camera</li> </ul>

Sanctions

19. For complaints and allegations concerning Members’ OER claims that are found to be substantiated, the Subcommittee recommends that sanctions similar to those stipulated under Rule 85 of RoP in relation to Rule 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest), where a Member may be admonished, reprimanded or suspended by the Council on a motion to that effect, be adopted.

## **Timing**

20. The Subcommittee recommends that the proposed mechanism for handling complaints and allegations concerning Members' OER claims, if adopted, will be implemented in the third term of LegCo.

## **Consultation**

21. The Subcommittee issued a consultation paper (LC Paper No. AS 253/03-04) to all Members on 3 May 2004 inviting their views on the proposed mechanism outlined in paragraphs 4 - 19 above.

## **Summary of response to the consultation paper**

22. At as 4 June 2004, a total of 42 Members respond to the consultation paper. 25 of them support the setting up of a mechanism for handling complaints and allegations concerning Members' OER claims. 10 propose that the issue should be considered by the third LegCo term and four need more time to consider the issue. Two do not support the setting up of such a mechanism. One has no comment.

23. All 25 Members, who support the setting up of a mechanism for handling complaints and allegations concerning Members' OER claims, agree with the Subcommittee's proposal that the Committee on Members' Interests should also handle complaints and allegations concerning Members' OER claims. 22 are of the view that meetings conducting investigations of such complaints and allegations should be held in camera. 22 agree with the Subcommittee's proposal that, for complaints and allegations which are found to be substantiated, sanctions similar to those stipulated under Rule 85 of RoP relating to Members' interests, where a Member may be admonished, reprimanded or suspended by the Council on a motion to that effect, be adopted.

24. A full summary of the response is in **Appendix IV**.

## **Recommendation**

25. In the light of Members' response and the imminent end of the present term, the Subcommittee recommends that the need to set up a mechanism for handling complaints and allegations concerning Members' OER claims be further considered in the third LegCo term.

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Legislative Council Secretariat  
15 June 2004



**Membership List of  
Subcommittee to consider a mechanism for handling complaints  
and allegations concerning Members' Operating Expenses  
Reimbursement Claims**

Hon Emily Lau Wai-hing, JP (Chairman)

Hon Cyd Ho Sau-lan

Hon Albert Ho Chun-yan

Hon Howard Young, SBS, JP

Hon Yeung Yiu-chung, BBS

Hon Michael Mak Kwok-fung

(Total : 6 members)

**Committee on Members' Interests**

***Terms of Reference***

- (1) To examine the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
- (2) To consider any proposals made by Members or others as to the form and contents of the Register;
- (3) To consider and investigate any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so;
- (4) 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; and
- (5) To report to the Council and make recommendations, including a recommendation as to a sanction under Rule 85 (Sanctions relating to Interests).

***Membership***

Dr Hon David Chu Yu-lin, JP (Chairman)

Hon Sin Chung-kai (Deputy Chairman)

Hon Cyd Ho Sau-lan

Hon Ng Leung-sing, JP

Hon Bernard Chan, JP

Hon Mrs Sophie Leung Lau Yau-fun, SBS, JP

Hon Yeung Yiu-chung, BBS



**THE PROCEDURE OF  
THE COMMITTEE ON MEMBERS' INTERESTS  
FOR HANDLING COMPLAINTS RECEIVED  
IN RELATION TO THE REGISTRATION AND DECLARATION  
OF MEMBERS' INTERESTS**

**July 1999**

**The procedure of the Committee on Members' Interests  
for handling complaints received  
in relation to the registration and declaration of Members' interests**

**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 (thereafter referred to as "the complainant) about the registration or declaration of interests of a Member (thereafter 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 (the 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 the Chairman or the Clerk receives a complaint by an anonymous or unidentifiable person or by a person who cannot be contacted, 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 decide not to hold such a meeting for the following reasons:
  - (a) the complaint is not related to the registration and declaration of Members' interests;
  - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
  - (c) the complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted; 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) The Committee may invite the complainant to attend a meeting to provide information. The Committee may also invite the Member under complaint to attend the meeting to give explanations and to provide information. 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.
- (9) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

## **Investigation**

- (10) 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.
- (11) 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. The Committee may cause witnesses to be examined at a meeting 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.
- (12) 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.

## **The Committee's decision as to whether a complaint is substantiated**

- (13) If the Committee decides that there is sufficient evidence to show and substantiate that the Member under complaint has provided false information in registering and declaring interests or has failed to register or declare registrable or declarable interests, it shall inform the complainant and the Member under complaint of its decision that the complaint is substantiated.
- (14) 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.

- (15) 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 concerned under Rule 85 of the Rules of Procedure.
- (16) 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**

- (17) The evidence taken before the Committee and documents presented to it, or its deliberations and decisions, shall not, except in the case of meetings of the Committee held in public, be disclosed by a member or by any other person before the Committee has presented its investigation report to the Council. Any member who fails to comply with this requirement may be admonished or reprimanded by the Council on a motion to that effect.
- (18) 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.
- (19) 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**

- (20) 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.



## Summary of Response

**Consultation paper on a mechanism for handling complaints and allegations  
concerning Members' Operating Expenses Reimbursement claims**

(As at 4/6/04)

No of respondents : 42

Q.1	Do you think there is a need for a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement (OER) claims?	Yes (25)	No (2)	Other Views (15)
		<ul style="list-style-type: none"> <li>- Democratic Party (11)</li> <li>- Hon LAU Wai-hing</li> <li>- Hon Bernard CHAN</li> <li>- Hon Henry WU King-cheong</li> <li>- Dr Hon LUI Ming-wah</li> <li>- Hon LI Fung-ying</li> <li>- Hon NG Leung-sing</li> <li>- Hon MA Fung-kwok</li> <li>- Hon Abraham SHEK Lai-him</li> <li>- Hon LEUNG Fu-wah</li> <li>- Hon LEE Cheuk-yan</li> <li>- Hon Michael MAK Kwok-fung</li> <li>- Hon Cyd HO Sau-lan</li> <li>- Hon Timothy FOK Tsun-ting</li> <li>(Only in this way can impartiality be manifested and controversy avoided)</li> <li>- Dr Hon David LI Kwok-po</li> </ul>	<ul style="list-style-type: none"> <li>- Dr Hon Eric LI Ka-cheung</li> <li>- Hon Margaret NG</li> </ul>	<ul style="list-style-type: none"> <li>- Democratic Alliance for Betterment of Hong Kong (10) (Propose that the issue should be discussed by the third LegCo term on whether such a mechanism should be set up)</li> <li>- Hong Kong Progressive Alliance (4) (As the scope covered is rather complicated, more in-depth consideration is necessary. A decision cannot be made at the present stage)</li> <li>- Hon LAU Ping-cheung (I have no comment on whether such a mechanism should be set up. However should it be set up, the membership should not be confined to LegCo Members only i.e. outsiders should be invited as members to ensure that it is above parties' politics and it should be open to the public)</li> </ul>

Q.2	Do you agree that the jurisdiction of the Committee on Members' Interests, which handles complaints in relation to the registration and declaration of Members' Interests, should be expanded to cover handling of complaints and allegations concerning Members' OER claims?	Yes (25)	No (1)	Other Views (0)
		<ul style="list-style-type: none"> <li>- Democratic Party (11)</li> <li>- Hon Emily LAU Wai-hing</li> <li>- Hon Bernard CHAN</li> <li>- Hon Henry WU King-cheong</li> <li>- Dr Hon LUI Ming-wah</li> <li>- Hon LI Fung-ying</li> <li>(Agree in principle. As the degree of the seriousness of the allegation may differ, it is more appropriate for the Police to handle serious allegation, so as to avoid Members investigating their fellow Member.)</li> <li>- Hon NG Leung-sing</li> <li>- Hon MA Fung-kwok</li> <li>- Hon Abraham SHEK Lai-him</li> <li>- Hon LEUNG Fu-wah</li> <li>- Hon LEE Cheuk-yan</li> <li>- Hon Michael MAK Kwok-fung</li> <li>- Hon Cyd HO Sau-lan</li> <li>(The scope of work should be confined to summarising the issues under complaint and allegation and submit a report to the Council. The Council will then decide on whether or not to set up/appoint an independent investigation body)</li> <li>- Hon Timothy FOK Tsun-ting</li> <li>(In this way, the structure will not be too cumbersome)</li> <li>- Dr Hon David LI Kwok-po</li> </ul>	<ul style="list-style-type: none"> <li>- Hon Margaret NG</li> </ul>	



Q.3		In Public (1)	In Camera (22)	Other Views (3)
	Do you think that investigations into complaints and allegations concerning Members' OER claims should be conducted in public or in camera?	<ul style="list-style-type: none"> <li>- Hon Emily LAU Wai-hing</li> </ul>	<ul style="list-style-type: none"> <li>- Democratic Party (11)</li> <li>- Hon Bernard CHAN</li> <li>- Hon Henry WU King-cheong</li> <li>- Hon LI Fung-ying (Personally, I think that the investigation should be conducted in camera but the result should be made public. If the allegation is not substantiated, open investigation may cause embarrassment to the Member concerned.)</li> <li>- Hon NG Leung-sing (The Members under complaint may request for open investigation)</li> <li>- Hon MA Fung-kwok</li> <li>- Hon Abraham SHEK Lai-him</li> <li>- Hon LEE Cheuk-yan</li> <li>- Hon Michael MAK Kwok-fung</li> <li>- Hon Cyd HO Sau-lan</li> <li>- Hon Timothy FOK Tsun-ting (Indirection can be avoided)</li> <li>- Dr Hon David LI Kwok-po</li> </ul>	<ul style="list-style-type: none"> <li>- Dr Hon LUI Ming-wah (Depends on the situation)</li> <li>- Hon LEUNG Fu-wah (Handle with flexibility. Meetings of the present Select Committee are conducted either in public or in camera)</li> <li>- Hon Margaret NG (Inapplicable)</li> </ul>

Q.4	Do you agree with the proposed sanctions of admonishment, reprimand, suspension by the Council on a motion to that effect for substantiated complaints and allegations concerning Members' OER claims?	Yes (22)	No (1)	Other Views (3)
Q.5	Other views on the proposed mechanism outlined in LC Paper No. AS253/03-04 not covered by the above questions.	<ul style="list-style-type: none"> <li>- Democratic Party (11)</li> <li>(Members should be duly reminded of the provisions when the mechanism is implemented)</li> </ul>		

**No of non-respondents : 17**

( ) No of Member