

立法會 *Legislative Council*

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Paper for the House Committee Meeting on 19 December 2003

Reimbursement of operating expenses for Members of the Legislative Council

Purpose

This paper sets out the existing arrangements for processing Member's claims for operating expenses reimbursements (OER) and for handling complaints or reports about abuse of OER.

Background

2. At its meeting on 28 November 2003, the House Committee discussed Hon Emily Lau's suggestion that a mechanism should be established to monitor Members' use of OER and to deal with complaints in this regard. The Secretariat was requested to prepare a paper on the existing arrangements to facilitate discussion on the matter at a future meeting.

Existing arrangements for processing OER claims

Reimbursement Guidelines

3. Members are issued with 'A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council' (Reimbursement Guide) on the day following their election. The Reimbursement Guide is drawn up by the Secretariat in the light of the following:

- (a) the ambit of the Sub-head "Remuneration and reimbursements for Members of the Legislative Council" approved by the Finance Committee of the Legislative Council; and
- (b) the reimbursement principles recommended by the government-appointed Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the HKSAR (Independent Commission) and approved by the Executive Council.

4. The following are the governing principles of the reimbursement system, as set by the Independent Commission at the time when the system was established in 1994:

- “(a) that LegCo Members must be accountable in respect of all their claims;
- (b) that their claims should be credible and reasonable; and
- (c) that all their accounts should be transparent and properly documented.”

Processing of Reimbursement Claims

5. Every invoice or receipt in support of a reimbursement claim has to be certified by the Member concerned. This ensures that Members are aware of every expenditure item. Besides, for each reimbursement claim, Members also have to confirm their accountability by declaring:

“this reimbursement claim complies in all aspects with the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council, which has been read and fully understood by me.”

6. On receipt of a reimbursement claim, the Accounts Section of the Secretariat examines every item to ensure that proper supporting documents are provided and the nature of an expense is reimbursable according to the Reimbursement Guide. After a claim has been checked by an Accounting Clerk, it is checked again by an Assistant Accountant. The Accountant reviews all claims to ensure that the Reimbursement Guide is adhered to. Doubtful claims are clarified with individual Members or their assistants, and the advice of Principal Assistant Secretary (Administration), Deputy Secretary General and/or Secretary General is sought on the admissibility of a claim, if necessary. Items not fulfilling the stipulated requirements or beyond any limits specified in the Reimbursement Guide will not be reimbursed.

Appeal Against Non-reimbursement of OER

7. Members or their assistants may discuss the claimability of any expenditure item with the Secretariat’s accounting staff, Principal Assistant Secretary (Administration), Deputy Secretary General and Secretary General.

8. If a Member does not agree with the Secretariat’s handling of a reimbursement claim, an appeal can be lodged with the Committee on Members’ Operating Expenses of The Legislative Council Commission. The Committee comprises the three ex-officio members of the Commission, i.e. the President of the Council, the Chairman of the House Committee and the Deputy Chairman of the House Committee. The terms of reference and membership list of the Committee are in **Appendix I**. No appeal has been made to the Committee since its establishment in 1994.

Transparency

9. All claim documents, except staff employment contracts and consultancy contracts, are available for public inspection at the Legislative Council Library. The employment contracts and consultancy contracts are withheld from public inspection on the recommendation of the Independent Commission. However, the names of Members' personal assistants and consultants, together with the amounts paid and the nature of the services provided, are shown on the invoices or receipts in the same way as other expense payments.

10. Copies of the reimbursed claims, including employment contracts and consultancy contracts, are also submitted to the Director of Administration for information.

11. Under Rule 83 of the Rules of Procedure, LegCo Members are required to make registration of interests. These declarations are also available for public inspection at the Library and on the website of the Legislative Council.

Complaints or reports about alleged abuse of OER

12. Whenever complaints are lodged with the Secretariat or there is a prima facie case about alleged abuse of OER, the Secretariat will seek clarification or explanation from the Member(s) concerned. On receipt of satisfactory clarification or explanation of the alleged abuse, the Secretariat will not take any further action on the cases. If, on clarification, some expenses are found to be not in accordance with the requirements of the Guide, the Member(s) concerned will have to refund the excess amount claimed.

Practices in overseas countries

13. A fact sheet on 'Mechanisms for regulating Members' use of allowances in selected legislatures' is in **Appendix II**.

Existing committees dealing with matters in relation to OER

14. There are two committees dealing with matters relating to OER:

(a) Committee on Members' Operating Expenses

This is a committee under The Legislative Council Commission referred to in paragraph 8 above.

(b) Subcommittee on Members' Remuneration and Operating Expenses Reimbursement

This is a subcommittee under the House Committee formed on 20 October 2000.

15. The terms of reference and membership list of the Subcommittee are in **Appendix III**.

Existing mechanism to deal with misbehaviour of Members of the Legislative Council

16. Under Article 79(7) of the Basic Law, the President of the Legislative Council shall declare that a member of the Council is no longer qualified for the office when he or she is censured for misbehaviour by a vote of two-thirds of the members of the Legislative Council present. Where such a motion has been moved, the matter stated in the motion shall be referred to an investigation committee unless the Council orders otherwise. The investigation committee is to establish the facts stated in the motion and give its views on whether or not the facts as established constitute grounds for the censure.

17. No Investigation Committee has been established since the provision for the establishment of investigation committee was stipulated in the Rules of Procedure.

Previous motion debates on a proposal to empower the Committee on Members' Interests (CMI) to carry out investigations into complaints about misconduct of Legislative Council Members

18. At the House Committee meeting on 30 May 1994, arising from public concern about an allegation of abuse of OER by a Member, Ms Emily Lau requested the Council to consider a proposal for the setting up of a committee to monitor the conduct of Legislative Council Members. She also suggested to expand the functions of CMI to include such responsibility. The House Committee invited CMI to consider the proposal. After studying the practice in other legislatures and much deliberation on the issue, a set of draft Guidelines on the standards of conduct for Legislative Council Members was drawn up and a public consultation exercise on the draft Guidelines conducted. The majority of Members of CMI were of the view that the introduction of some formal measures to monitor the conduct of Legislative Council Members would be a step in the right direction and would enhance the integrity of the Legislative Council. At the House Committee meeting on 16 June 1995 Members expressed strong reservations about the recommendations set out in CMI's report. Some Members felt that Legislative Council Members' conduct was already under public scrutiny and any misconduct by a Legislative Council Member would be subject to public censure. In their view, therefore, there was no need to introduce any formal system to

monitor the conduct of Legislative Council Members. Some Members expressed concern that CMI might operate like secret police if it took up the role of monitoring the conduct of Legislative Council Members. There was also fear of abuse and concern that the investigation alone might damage the Member's public image. As the House Committee failed to arrive at a decision on CMI's recommendations, CMI moved a resolution at the Council meeting on 19 July 1995 to amend the then Standing Orders to empower CMI to consider and investigate complaints about Legislative Council Members' misconduct. The motion was negated by a vote of 28 to 20. The same motion was moved again at the Council meeting on 3 April 1996. The motion was again negated by a vote of 36 to 11.

19. The terms of reference and membership list of CMI, which is a standing committee of the Council, are in **Appendix IV**.

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Legislative Council Secretariat
16 December 2003

Committee on Members' Operating Expenses

Terms of Reference

- (1) To advise on administrative matters relating to Members' operating expenses;
and
- (2) To review the Legislative Council Secretariat's decisions on Members' claims for operating expenses reimbursements.

Membership

Hon Mrs Rita Fan Hsu Lai-tai, GBS, JP (Chairman)

Hon Miriam Lau Kin-yee, JP

Hon Fred Li Wah-ming, JP

Fact Sheet

Mechanisms for Regulating Members' Use of Allowances in Selected Legislatures

	United Kingdom's House of Commons	United States' House of Representatives	Australia's House of Representatives	Canada's House of Commons
Types of allowances	<ul style="list-style-type: none"> Staffing Allowance Incidental Expenses Allowances Information Technology Equipment Pension provision for Members' staff Temporary Assistance London Supplement Additional Costs Allowance Car Mileage Allowance Bicycle Allowance Free stationery, inland telephone and postal services from Westminster Winding-up Allowance 	<ul style="list-style-type: none"> Members' Representational Allowance which can be used for official and representational expenses relating to staffing, communications, stationery, equipment and travel. 	<ul style="list-style-type: none"> Electorate Allowance Travelling Allowance 	<ul style="list-style-type: none"> Member's Office Budget which is used to pay expenses for Members' parliamentary precinct offices, including staff remuneration, and expenses incurred in establishing and operating a constituency office, including staff remuneration, office rent and utilities and office furnishings, supplies and equipment. Constituency Furniture and Equipment Allowance Members' Travel Expenses Franking privileges
Authority responsible for the disbursement of allowances	<ul style="list-style-type: none"> Department of Finance and Administration (DFA) of the House of Commons 	<ul style="list-style-type: none"> Committee on House Administration (CHA) 	<ul style="list-style-type: none"> Electorate Allowance is administered by the Department of the House of Representatives (DHR). Travelling allowance is administered by the Department of Finance and Administration (DFA) of the Australian Government. 	<ul style="list-style-type: none"> The House of Commons Administration

	United Kingdom's House of Commons	United States' House of Representatives	Australia's House of Representatives	Canada's House of Commons
Mechanisms for preventing misuse or abuse of allowances	<ul style="list-style-type: none"> • DFA does not take the initiative to check whether Members use allowances for private purposes, unless it comes to notice from, for example, complaints by other Members or by the general public. The ultimate responsibility for the proper use of allowances rests with the Members. • The allowances system is reviewed occasionally so as to minimize abuse or misuse of allowances. For example, in 2001, to foster greater transparency and accountability, Office Cost Allowance was split into three different allowances, namely Staffing Allowance, Incidental Expenses Allowances and the Information Technology Equipment. 	<ul style="list-style-type: none"> • No mechanism is in place for the House to take the initiative to check whether Members use allowances for private purposes. • Members can use the allowances at their disposal as long as they conform with the regulations of CHA and the Code of Official Conduct. • Incidental personal use of equipment and supplies owned or leased by, or the cost of which is reimbursed by, the House is permitted only when such use is negligible in nature, frequency, time consumed and expense. • Members' offices are advised to adopt restrictive incidental use of allowances policies for their staff. 	<ul style="list-style-type: none"> • No mechanism is in place for the House to take the initiative to check whether Members use allowances for private purposes. • DHR does not exercise any control on Members' use of Electorate Allowance (which is paid with salary but is not taxed), but Members need to fully account for their expenditure when they submit their annual income tax return to the Australian Taxation Office (ATO). • There are qualification rules for the payment of Travelling Allowance. 	<ul style="list-style-type: none"> • No mechanism is in place for the House to take the initiative to check whether Members use allowances for private purposes. • Members can use the allowances at their disposal as long as they conform with the related guidelines. • Each year, the Board of Internal Economy (BOIE) which is the House's governing body chaired by the Speaker of the House, publishes regulations setting out the terms and conditions of managing and accounting for the budgets and allowances for Members. BOIE has exclusive authority to determine whether their use is or was proper.

	United Kingdom's House of Commons	United States' House of Representatives	Australia's House of Representatives	Canada's House of Commons
Public disclosure of Members' use of allowances	<ul style="list-style-type: none"> Members' accounts are disclosed in the Cabinet Office reports which are public documents, but receipts or other evidence of the use of allowances are not made available for public inspection. 	<ul style="list-style-type: none"> Members' expenditures are compiled and published by the Office of Finance of the House in the Quarterly Statement of Disbursements, which is a public document. 	<ul style="list-style-type: none"> The usage of Travelling Allowance for each Member is tabled in the form of a public document in the House every six months. 	<ul style="list-style-type: none"> The Speaker of the House tables the consolidated report on Individual Member's Expenditures to the House on an annual basis.
Public disclosure of Members' register of interests	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> Yes
Provisions of code of conduct/ ethics manual relevant to regulating Members' use of allowances	<ul style="list-style-type: none"> No improper use is made of any payment or allowance made to Members for public purposes, and the administrative rules which apply to such payments and allowances must be strictly observed. 	<ul style="list-style-type: none"> Official expenses allowances are to be used to pay ordinary and necessary business expenses incurred by the Member (and/or the Member's employees) in support of the conduct of the Member's official and representational duties. 	<ul style="list-style-type: none"> The House does not have a code of conduct or ethics manual relevant to regulating Members' misbehaviour. 	<ul style="list-style-type: none"> The House does not have a code of conduct or ethics manual relevant to regulating Members' misbehaviour. A bill is being introduced to issue a code of conduct for Members.
Availability of independent party in handling Members' misbehaviour (including misuse or abuse of allowances)	<ul style="list-style-type: none"> The Parliamentary Commissioner for Standards is responsible for administering the Code of Conduct, and can receive and investigate complaints against Members who are allegedly in breach of the Code or fail to register interests. 	<ul style="list-style-type: none"> The House does not have a commissioner or equivalent for administering the Ethics Manual or handling complaints against Members' misbehaviour. 	<ul style="list-style-type: none"> The House does not have a commissioner or equivalent for handling complaints against Members' misbehaviour. 	<ul style="list-style-type: none"> A bill is being introduced to establish the Ethics Commissioner who has power to investigate complaints against Members' misbehaviour.

	United Kingdom's House of Commons	United States' House of Representatives	Australia's House of Representatives	Canada's House of Commons
Committee responsible for handling Members' misbehaviour (including misuse or abuse of allowances)	<ul style="list-style-type: none"> The Select Committee on Standards and Privileges oversees and supports the work of the Parliamentary Commissioner for Standards, and in particular adjudicates his findings of complaints, and recommends to the House what actions should be taken. 	<ul style="list-style-type: none"> The Committee on Standards of Official Conduct can investigate alleged violations of rules or regulations governing the performance of Members' official duties, and recommends to the House what actions should be taken. 	<ul style="list-style-type: none"> The Committee of Members' Interest can consider any specific complaints made in relation to the registering or declaring of interests, and consider what changes to any code of conduct adopted by the House are necessary or desirable. 	<ul style="list-style-type: none"> The Standing Committee on Procedure and House Affairs is responsible for inquiry into matters related to Members' Privileges, including their misbehaviour, and recommends to the House what actions should be taken.
Actions against misuse/ abuse of allowances	<ul style="list-style-type: none"> DFA normally asks for the Member concerned to return the misspent funds. If the complaint against a Member's misuse of allowances does not rise to the level of consideration by the House, the Select Committee on Standards and Privileges may choose to admonish the Member found to be at fault but recommend no further action. If the complaint seems to bring up issues under the criminal law, the Parliamentary Commissioner for Standards will encourage the complainant to raise the matter with the prosecuting authorities. 	<ul style="list-style-type: none"> The misuse of official allowances is regarded as the violation of House rules and may subject Members or their employees to criminal prosecution and actions to recover the misspent funds. 	<ul style="list-style-type: none"> Misuse of allowance is treated as potential fraud and referred to the Federal Police for investigation. If the misuse of allowances is negligible, Members normally return the misspent funds to the authorities. Regarding the Electorate Allowance, if ATO thinks that any items in a Member's income tax return are not part of servicing the electorate, it will calculate additional tax at the highest rate and serve notice of additional tax payable on the Member. 	<ul style="list-style-type: none"> In the event the relevant regulations are contravened by a Member, BOIE can pursue a number of options, including withholding money from the Member's budgets or allowances, or freezing any budget or allowance that may be available to the Member.

Sources

- (1) <http://www.Publications.parliament.uk>
- (2) <http://www.house.gov>
- (3) <http://www.aph.gov>
- (4) <http://www.Parl.gc.ca>
- (5) Replies from parliaments.

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Subcommittee on Members' Remuneration and Operating Expenses Reimbursement

Matters to be examined

- (1) arrangements for Mandatory Provident Fund (MPF) payments for Members' personal assistants;
- (2) the mechanism of annual adjustment to the levels of Members' remuneration and operating expenses reimbursement (OER);
- (3) overall review of the mechanism for determining Members' remuneration and OER; and
- (4) retirement benefits for Members.

Membership

Hon Ng Leung-sing, JP (Chairman)

Hon Cyd Ho Sau-lan

Hon Leung Yiu-chung

Hon Howard Young, SBS, JP

Hon Yeung Yiu-chung, BBS

Hon Emily Lau Wai-hing, JP

Hon Andrew Cheng Kar-foo

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