

立法會
Legislative Council

LC Paper No. AS 215/03-04

Ref : AM 12/01/22

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

**Minutes of meeting
held on Thursday, 19 February 2004
at 2:30 pm in Conference Room B of the Legislative Council Building**

Members Present	: Hon Emily Lau Wai-hing, JP (Chairman) Hon Albert Ho Chun-yan Hon Howard Young, SBS, JP Hon Yeung Yiu-chung, BBS
Members Absent	: Hon Cyd Ho Sau-lan Hon Michael Mak Kwok-fung
Member in Attendance	: Hon Ng Leung-sing, JP
Clerk in Attendance	: Mrs Anna Lo Principal Council Secretary (Administration) (PCS(A))
Staff in Attendance	: Mr Ricky C C Fung, JP Secretary General (SG) Mr Law Kam-sang, JP Deputy Secretary General (DSG) Mr Y S Lee Senior Assistant Legal Adviser 1 (SALA1) Mr Joseph Kwong Accountant (ACCT)

I. Confirmation of minutes of the last meeting held on 13 January 2004

(LC Paper No. AS168/03-04)

The minutes of the last meeting held on 13 January 2004 were confirmed.

II. Draft consultation paper on mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement Claims

(LC Paper No. AS162/03-04)

2. At the invitation of the Chairman, SG drew members' attention to the following points:

(a) Functions of The Legislative Council Commission ("LCC")

As explained in paragraph 10 of the paper, adding investigative and sanction-related functions to LCC's existing administrative functions could be subject to legal challenge, unless The Legislative Council Commission Ordinance ("The LCC Ordinance") was amended.

(b) Power of inquiry and protection of members

Unless the monitoring/investigation body ("MIB") was vested with the power to summon witnesses, giving of evidence would depend on the cooperation of Members, their personal assistants and any other parties involved. Besides, if the membership of MIB comprised non-LegCo Members, they could not have the privileges and immunities conferred on LegCo Members under the Legislative Council (Powers and Privileges) Ordinance ("P & P Ordinance").

(c) Standing committee or ad hoc subcommittee under the House Committee

For the reasons given in (a) and (b), the more practical options would be to set up a standing committee or an ad hoc subcommittee under the House Committee as the MIB. While a standing committee would automatically have the powers as provided in section 9 of the P & P Ordinance, an ad hoc subcommittee could have the same powers through a resolution passed in the Council.

(d) Types of disciplinary action in the Civil Service

As requested by the Subcommittee, the types of disciplinary action adopted in the Civil Service had been obtained. However, it might not be appropriate to apply them to LegCo Members, because, unlike the relationship between the Government and the civil servants, there was no employer and employee relationship between LegCo and its Members.

LCC's lack of investigative and disciplinary power

3. Regarding the power of LCC to take up investigative and disciplinary functions, SALA1 said that, although section 9(e) provided that LCC could “perform such other duties as the Council may by resolution determine”, such duties should be related to the existing functions stated in section 9(a) - 9(d). Since the functions of monitoring and disciplining Members were unrelated to the existing ones, adding them as duties of LCC through the channel provided by section 9(e) could be challenged in a court of law. A better way to confer the required powers would be by amending The LCC Ordinance.

Ad hoc or Standing Committee

4. Mr Yeung Yiu-chung opined that, as complaints and allegations concerning Members' OER claims were not expected to be frequent and many, a committee could be set up as and when necessary. He believed that this arrangement would not unduly delay the handling of a complaint. He also pointed out that one of the merits of an ad hoc committee would be that the composition of the committee could be determined each time, depending on the nature of the complaint and the LegCo Member involved. This would avoid the situation where a sitting member of MIB had to be replaced by another LegCo Member outside the MIB if he or she was the complainant or the subject of a complaint.

5. Mr Howard Young agreed and said that it might not be necessary for most of such inquiries to be conducted urgently because allegations would normally relate to events that had happened some time ago. Nonetheless, he suggested that the structure of MIB and the way it would operate should be set up in advance, so that the MIB could be formed immediately when required.

6. Mr Albert Ho suggested that LegCo members might sit on the standing committee by rotation.

Action

Double jeopardy

7. Referring to paragraph 20 of the draft consultation paper on “Sanctions”, SALA1 reminded members that imposing sanctions such as admonishment, reprimand or suspension recommended by MIB would not preclude the moving of a motion under Rule 49B of the Rules of Procedure (“RoP”) to disqualify a Member from office for the same misbehaviour. If this occurred, this would be against the legal principle that a person should not be punished twice for the same wrongdoing. Mr Albert Ho said that the Basic Law did not rule out sanctions other than that imposed by Rule 49B. He asked if the Secretariat could devise a method to avoid double jeopardy.

Secretariat

Different handling method from that of District Councils

8. Mr Ng Leung-sing observed that from time to time fraudulent cases involving District Council members were investigated by law enforcement agencies and tried by the court. He wondered why allegations involving LegCo Members should be handled differently. He warned that the public might suspect that LegCo Members’ own investigation was aimed at protecting their fellow Members from more severe punishment.

9. The Chairman emphasized that the purpose of setting up the proposed mechanism was to step up the monitoring of Members’ use of their operating expenses reimbursements (“OERs”). Compared with other legislatures that had no such systems in place, the monitoring system being discussed would offer stricter control.

10. Mr Albert Ho and Mr Howard Young remarked that fraudulent cases involving District Council members were mostly related to misappropriation of funds allocated for activities organized on behalf of District Councils. These cases were different from the possible abuse of OERs by LegCo Members.

Restriction of proposed monitoring scheme to non-criminal cases

11. Mr Albert Ho said that the proposed MIB would only look into non-criminal cases. Suspected criminal activities would still be referred to the relevant law enforcement agencies. In fact, any self-monitoring system would not replace law enforcement agencies and debar anybody from being prosecuted. He added that, once a case was in the hands of a law enforcement agency, LegCo’s own investigation should be suspended.

Action

12. Mr Howard Young referred members to paragraph 14 of the minutes of the last meeting, which recorded his opinion that “the monitoring body should only handle complaints of a less serious nature; serious violations of law should be referred to law enforcement agencies”. He commented that the Accounts Office was already very strict in vetting the reimbursement documents. Any non-compliance would be rejected and certification was required for even minute details. He agreed that the monitoring mechanism being discussed was intended to strengthen the system rather than replacing the law enforcement system.

13. Mr Ng Leung-sing questioned how the nature and seriousness of a case could be determined before investigation. He believed that the public might not be able to differentiate between cases that should be dealt with by MIB and those that should be referred to law enforcement agencies. The proposed system might give the public an impression that its purpose was to delay action. The Chairman responded that, on the contrary, the intention of setting up the proposed mechanism was to deal with allegations which would otherwise be left unattended. SG reiterated that under the present ‘honour’ system, the Secretariat would only seek clarifications on complaints and allegations concerning OER claims. The Secretariat was not empowered to conduct investigations into such complaints and allegations.

Pros and cons of setting up an MIB

14. Mr Ng Leung-sing opined that if the terms of reference of the MIB were not clearly defined, many irrelevant complaints might land on the MIB and eventually had to be re-directed to other bodies. Mr Albert Ho did not agree that the problem of re-directing complaints was a valid reason for not setting up the proposed mechanism. He insisted that the setting up of the proposed mechanism would uphold the confidence of the public in LegCo. After further discussion, Mr Ng Leung-sing agreed that a complaint-handling system should be established, so as to assure the public that complaints against LegCo Members would be properly dealt with.

Powers and privileges / investigation in public

15. DSG reminded members that if MIB was composed of non-LegCo Members, these members would not be protected by the P and P Ordinance when conducting an investigation or inquiry in public.

Action

16. Mr Albert Ho considered that it might not be necessary for an investigation to be held in public. The Chairman insisted that any inquiry should be open to the public.

17. Mr Albert Ho also noted that although many independent committees appointed by the Government for inquiry into special events were formed without any explicit powers or privileges, yet parties involved were willing to co-operate. He believed that people concerned would appreciate the opportunity to clear their names in an honourable way. Therefore, the power to summon witnesses could be sought as a last resort.

Composition of MIB

18. Mr Yeung Yiu-chung remarked that to avoid conflict of interest, apart from the LegCo Member concerned, it would be more desirable for his/her fellow party members not to join the MIB.

19. Mr Albert Ho expected that the operation of MIB should be above party politics; therefore fellow party members of the LegCo Member being investigated needed not be excluded from MIB. The Chairman agreed.

20. Mr Ng Leung-sing suggested that as LCC was already a well-balanced body including representatives from various political groupings of LegCo, it could be invited to nominate or form an MIB. For flexibility, it was not necessary for the composition of MIB to be fixed. It could be determined case by case. It might comprise members who were not members of LCC.

21. DSG suggested that reference might be made to the composition of an investigation committee provided in Rule 73A of RoP.

Consultation

22. The Chairman summarized members' discussions and requested the Secretariat to draft a discussion paper based on Members' views expressed at the meeting to facilitate members' consultation with other Members in their respective political groupings.

Secretariat

(Post-meeting note: A discussion paper, LC Paper No. AS203/03-04(01), was issued to all LegCo Members on 12 March 2004.)

Action

III. Date of next meeting

23. The next meeting would be held on 23 March 2004, at 3:30 pm.

(Post-meeting note: The meeting was rescheduled to 26 March 2004, at 9 am.)

Adjournment

24. The meeting ended at 3:47 pm.

Legislative Council Secretariat
March 2004