

**立法會**  
**Legislative Council**

LC Paper No. AS264/03-04

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 Friday, 26 March 2004  
at 9:00 am 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

**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)

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**I. Confirmation of minutes of the last meeting held on 19 February 2004**

*(LC Paper No. AS 215/03-04)*

The minutes of the last meeting held on 19 February 2004 were confirmed.

**II. Mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement Claims**

*(LC Paper No. AS 203/03-04(01))*

2. As detailed in the paper, SG pointed out that, out of the four options for constituting the Monitoring/Investigation Body (MIB), the more feasible two were by means of (a) a standing committee or (b) an ad hoc committee. The main drawback of the latter option was that any allegations and complaints received might have to be referred to the House Committee for a decision as to whether an ad hoc committee should be formed to examine the case.

3. In view of the problems associated with the initial handling of complaints and allegations, Mr Yeung Yiu-chung agreed that a standing committee might be more feasible. However, he was concerned about the need to re-constitute the standing committee if its chairman and/or members were the subject of an allegation. Referring to the rules of the Committee on Members' Interests (CMI), SG and DSG responded that no member of CMI was allowed to participate in the handling or deliberation of a complaint against him. Instead of re-constituting CMI in such cases, the remaining members would deal with the complaint. The Chairman remarked that members of CMI were elected by the House Committee and appointed by the President. CMI comprised seven members and three members made the quorum.

4. Members agreed that expanding the terms of reference of CMI to cover allegations and complaints about Members' use of the operating expenses reimbursement (OER) would provide a simple mechanism for handling allegations and complaints against LegCo Members. On the assumption that the House Committee would support the proposition that CMI's terms of reference be expanded to cover complaints concerning LegCo Members' use of OER, members further agreed that the detailed procedure for dealing with such complaints could be determined by CMI itself.

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5. In reply to the Chairman, DSG advised that the chairman of CMI would consider whether a meeting should be held to consider a complaint received. Should the chairman consider that no meeting was necessary, he had to inform other members of CMI of his decision with reasons. SG added that if the majority of the members considered otherwise, a meeting would be held.

6. At the invitation of the Chairman, SALA1 explained the concept of double jeopardy. He advised that the principle is to avoid a person being tried more than once on the same set of facts. In the context of the Legislative Council, Rule 49B of the Rules of Procedure provided that upon the moving of a disqualification motion, debate should be adjourned and the matter referred to an investigation committee, unless “the Council, on a motion which [may] be moved without notice by any Member, otherwise [orders]”. If the latter motion was agreed, “no further action [shall] be taken on the motion moved under Subrule (1A)”. In *Chim Pui Chung v The President of the Legislative Council* (Case No. HCAL 71/1998), the Court indicated that whether and when a motion for disqualification of a Member should be moved is for the Legislative Council to decide.

7. Mr Albert Ho opined that once the procedure for removing a LegCo Member under Article 79(7) of the Basic Law was activated, the investigative action against him being taken by the MIB (i.e. CMI if the Subcommittee's proposal was accepted) should be put in stay. SALA1 advised that there was an existing mechanism under Rule 49B in that any Member might move without notice a motion not to proceed with the referral to Investigation Committees, and then no further action would be taken on the motion to censure. Thus it would not be necessary to reiterate them in the procedure to be proposed. The Chairman added that Subrule (2A) under Rule 49B had already provided for the stay of a motion moved under Subrule (1A).

8. In reply to SG, Mr Yeung Yiu-chung, Mr Albert Ho and Mr Howard Young considered it unnecessary to consult CMI on taking up the proposed additional duties, at this stage, pending consideration of the Subcommittee's recommendation by the House Committee.

9. The Chairman requested the Secretariat to draft a paper along the lines discussed at the meeting to consult all LegCo Members on the proposed mechanism. The draft paper should be circulated for the review of the Subcommittee before issue. Secretariat

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*(Post-meeting note: A draft consultation paper (LC Paper No. AS245/03-04) was issued to members of the Subcommittee on 23 April 2004 for their comments. The consultation paper (LC Paper No. 253/03-04) was issued to all LegCo Members on 3 May 2004.)*

**Adjournment**

10. The meeting ended at 9:26 am.

Legislative Council Secretariat  
May 2004