

立法會 *Legislative Council*

LC Paper No. AS162/03-04(01)

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Draft Consultation paper on **Mechanism for Handling Complaints and Allegations Concerning** **Members' Operating Expenses Reimbursement Claims**

Purpose

The purpose of this paper is to consult Members on whether and how a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement (OER) claims should be set up.

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 Subcommittee). The membership list of the Subcommittee is in **Appendix I**.

Need for a mechanism

3. The Subcommittee held a meeting on 13 January 2004. It considers that, in order to uphold the reputation of the Legislative Council (LegCo) and its Members, it is necessary to establish 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, is outlined in the ensuing paragraphs.

The proposed mechanism

I. Scope

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

II. General principle

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

III. Procedures for inquiry/investigation

6. An overseeing body (OB) should be set up to receive and consider all complaints and allegations, including press reports, concerning Members' OER claims. Upon receipt of a complaint or allegation, OB will examine it in the first instance and determine whether an investigation should be conducted. If so, the case will be referred to an investigative body (IB).

IV. Composition of the Overseeing Body

7. To ensure fairness and avoid abuse of the mechanism, membership of OB should be representative of the various political groupings. No member of OB should participate in the handling of a complaint or allegation which is made by or against him.

8. The following options for the composition of OB may be considered:

- (a) a new standing committee (similar to the Committee on Members' Interests) appointed by the President of LegCo in accordance with an election procedure determined by the House Committee (HC). (Under Rule 80 of the Rules of Procedure, a standing committee may summon, when exercising its powers and functions, persons concerned to testify or give evidence.); or
- (b) The Legislative Council Commission (LCC); or
- (c) a subcommittee under HC.

9. Whether LCC could perform the functions of OB depends on whether it has the necessary functions and powers for doing so. The functions and powers of LCC are provided respectively in sections 9 and 10 of The Legislative Council Commission Ordinance (Cap. 443)("the Ordinance")(the sections are in **Appendix II**). Under section 9, functions of the Commission include "to provide through the Secretariat administrative support and services to the Council", and "to perform such other duties as the Council may by resolution determine". As part of the "administrative support and services", the Secretariat is processing OER claims under the supervision and direction of LCC. Since LCC is already supervising the processing of OER claims, if it were to have the formal function of receiving complaints of abuse that formal function could arguably be considered as part and parcel of the processing process. Alternatively, it might be possible to invoke section 9(e) by having the Legislative Council pass a resolution to impose upon LCC the duty to deal with complaints of abuse. If such a duty were to be imposed by a Legislative

Council resolution made under section 9(e), section 10(1)(o) which provides that LCC has the power "to do other incidental act or thing or exercise such power as is necessary for the performance of the functions imposed on the Commission under this Ordinance" may be relied upon as the legal authority providing LCC with the necessary powers to carrying out that newly imposed duty.

10. The Legal Service Division has reviewed the detail proposals of the scheme and the existing functions of LCC in the Ordinance. Its views are as follows. The scheme under consideration is one devised by the Legislative Council to investigate and report to the Legislative Council on alleged misuse of OER by Members. Under the proposed scheme, OB would be receiving complaints, determining whether to conduct investigations, determining if a complaint is substantiated, and reporting as well as recommending sanctions to the Legislative Council. Although section 9(e) enables the Legislative Council to determine by resolution other duties for the LCC, the nature of these "other duties" should be similar in nature or have some relation with the existing functions stipulated in section 9(a) to (d). The existing functions of LCC are administrative in nature. The OB's duties are not administrative in nature and, in substance, do not have a clear relation with LCC's existing functions. To impose on LCC a duty which goes beyond providing administrative support or services to the Council, or has no relation to its existing functions, may be subject to legal challenge. Should it be decided as a matter of policy that LCC should be conferred the function of being the OB, 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.

V. Investigative Body

11. As it is not expected that there will be many complaints and allegations, an IB may be formed on an ad hoc basis.

12. The Subcommittee considers that to ensure transparency of the investigations, hearings of IB should be conducted in public*.

* Note: *The practice in some overseas legislatures as to whether evidence-taking and deliberations on Members' misbehaviour are held in camera or in private is as follows:*

<i>Parliamentary Commissioner for Standards in the UK's House of Commons</i>	<i>Committee on Standards of Official Conduct in the US's House of Representatives</i>	<i>Committee of Privileges in Australia's House of Representatives</i>	<i>Standing Committee on Procedure and House Affairs in Canada's House of Commons</i>	<i>Committee of Privileges in Parliament of Singapore</i>
• <i>taken in private</i>	• <i>taken in private</i>	• <i>taken either in private or in public</i>	• <i>up to the committee's discretion;</i> • <i>taken in private to deal with matters requiring confidentiality</i>	• <i>taken in private</i>

13. The following options for the composition of IB may be considered:

- (a) an independent committee chaired by a retired judge and composed of two other 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; or

- (b) an ad hoc committee of LCC (but please refer to the considerations in paragraphs 9 and 10); or
- (c) an ad hoc subcommittee of HC.

14. In the case of (b) or (c), the membership should be representative of various political groupings and no Member should serve as a member of IB where the complaint or allegation is made by or against him.

15. The Subcommittee has no consensus on the composition of IB.

VI. Power of investigation

16. The Subcommittee does not consider it necessary for OB or IB to be given special powers, because it envisages that, being persons of integrity, Members and their assistants are likely to co-operate in giving evidence and providing information required in relation to the complaint or allegation.

VII. Action taken on IB's report

17. On completion of investigation, IB will report its finding to OB, which will decide on the appropriate action to be taken.

18. If OB decides, upon examination of IB's report, that there is sufficient evidence to support the complaint or allegation that the Member concerned has abused OER, it will inform the Member under complaint or allegation of its decision that the complaint or allegation is substantiated. It will also present a report to the Council on the complaint or allegation, in which the evidence and its opinion should be set out. OB may also make a recommendation to the Council as to whether a sanction should be imposed on the Member concerned.

19. If OB is of the opinion that the complaint or allegation is not substantiated, it will convey the decision to the Member and the complainant or person/organization making the allegation concerned.

VIII. Sanctions

20. Sanctions similar to those stipulated under Rule 85 of the Rules of Procedure 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) may be adopted, where a Member may be admonished, reprimanded or suspended by the Council on a motion to that effect.

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Legislative Council Secretariat
February 2004

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

Membership List

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)