

立法會

Legislative Council

LC Paper No. AS203/03-04(01)

Ref: AM12/01/22

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

Meeting on 26 March 2004

Discussion paper on Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims

Purpose

The purpose of this paper is to facilitate members' further discussion on 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).

3. The Subcommittee has held two meetings to discuss whether and how such a mechanism should be set up.

Need for a mechanism

4. The Subcommittee 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 (RoP), is outlined in the ensuing paragraphs.

The proposed mechanism

I. Scope

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

II. General principle

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

III. The Monitoring/Investigation Body (MIB)

7. To ensure fairness and avoid abuse of the mechanism, membership of MIB should be representative of the various political groupings. No member of MIB should participate in the handling of a complaint or allegation, which is made by or against him. With reference to Rule 73A of RoP on the composition of an investigation committee established under Rule 49B(2A) (Disqualification of Member from Office) of RoP, it is proposed that MIB will consist of a chairman, a deputy chairman and 5 members. The quorum of MIB will be 5 members including the chairman.

8. Consideration has been given to the following options on the composition of MIB:

(a) A standing committee

9. A standing committee may summon, when exercising its powers and functions, persons concerned to testify or give evidence. (Section 9 of the Legislative Council (Powers and Privileges) Ordinance refers.) A new standing committee may be appointed by the President of LegCo; or alternatively the jurisdiction of an existing standing committee, namely the Committee on Members' Interests (CMI) which handles complaints in relation to the registration and declaration of Members' interests, may be expanded to include handling of complaints and allegations concerning Members' OER claims.

10. The procedure of CMI for handling complaints received in relation to the registration and declaration of Members' interests is in the **Appendix**.

(b) An ad hoc committee

11. An ad hoc committee, such as a Select Committee, has power to summon when authorized by LegCo by resolution. (Section 9 of the Legislative Council (Powers and Privileges) Ordinance refers.)

(c) An independent panel

12. 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

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

14. This option is to avoid Members investigating another 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, the power to summon witnesses etc. Giving of evidence merely relies on the cooperation and integrity of the Member concerned, his/her assistants and third parties involved.

(d) The Legislative Council Commission (LCC)

15. Legal opinion is that to impose on LCC a duty that goes beyond providing administrative support or services to the Council, or has no relation to its existing functions as stipulated in sections 9 and 10 of the Ordinance, 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 MIB, 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.

16. Members of the Subcommittee generally agree not to pursue options (c) and (d) in view of the legal complications. While they agree to pursue the other two options, they have diversified views on options (a) and (b). Some prefer option (a) because it is necessary to have a standing committee to receive and consider all complaints and allegations concerning Members' OER claims and determine whether an investigation should be conducted; or, if the complaints and allegations are of a

criminal nature, refer them to the relevant law enforcement agencies. The availability of a standing committee will enable immediate action to be taken on such complaints and allegations. Those who prefer option (b) are of the view that such complaints and allegations are not expected to be frequent and many. Provided that there is an agreed mechanism, the procedure for the appointment of an ad hoc committee takes only two to three weeks. Those Members who are against this option consider that the question of who is to receive and consider complaints and allegations before the appointment of the ad hoc committee has to be addressed to.

17. Members of the Subcommittee will give further thoughts to options (a) and (b) in consultation with respective political affiliations.

Procedures on handling of complaints or allegations

18. MIB receives and considers all complaints and allegations, including press reports, concerning Members' OER claims. Upon receipt of a complaint or allegation, MIB will examine it and determine whether an investigation should be conducted; or, refer it to the relevant law enforcement agencies if it is of a criminal nature.

19. If MIB decides, upon investigation, 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. MIB may also make a recommendation to the Council as to whether a sanction should be imposed on the Member concerned.

20. If MIB 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.

Investigations conducted in public

21. The Subcommittee considers that to ensure transparency of the investigations, hearings of MIB should be conducted in public.

22. For members' reference, meetings of CMI 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 held in camera. However, hearings are conducted at meetings held in public if the Member under complaint or allegation makes such a request. As stipulated in Rule 73A of RoP, as a general rule, all meetings of the investigation committee established under Rule 49B(2A) are held in camera.

23. 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:

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

Sanctions

24. 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) 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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**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.