

立法會
Legislative Council

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Committee on Members' Interests

**Minutes of the first meeting
held on Wednesday 3 November 2004 at 9:00 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG

Clerk in attendance : Mrs Betty LEUNG
Chief Council Secretary (3)1

Staff in attendance : Mr Ray CHAN
Assistant Secretary General 3

Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Watson CHAN
Head (Research and Library Services)

Mr Thomas WONG
Research Officer 4

Mr Arthur LEUNG
Senior Council Secretary (3)1

Action

I. Matters of ethics in relation to the conduct of Members in their capacity as such

The Chairman advised that the Committee on Members' Interests (the Committee) of the last Legislative Council (LegCo) had amended the

“Advisory Guidelines on Matters of Ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such” (the Advisory Guidelines) and the amended Advisory Guidelines were issued to all LegCo members subsequently. She sought members’ views on whether it was necessary to amend and issue the Advisory Guidelines. Ms Emily LAU supported issuing the Advisory Guidelines to Members, especially when there were 21 new Members in this LegCo term.

2. Ms Emily LAU pointed out that the first guideline in the Advisory Guidelines, i.e. “a Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council”, might be regarded as too loose and unspecific, making it difficult to pass an objective judgement on whether certain conduct of a Member had violated the guideline. She suggested that the Committee might consult Members and the public on how the Advisory Guidelines should be updated, and might draw reference from the Guide to Judicial Conduct recently published by the Judiciary. Mr LI Kwok-ying shared Ms Emily LAU’s view. He also noticed that the guidelines in the Advisory Guidelines mainly involved pecuniary interests and conflict of interests while other issues were seldom embraced. The Chairman pointed out that there was a view in the community that Members should judge by themselves whether their personal conduct was appropriate and be held responsible for that. As such, there was no need for LegCo to draw up specific ethical standards of Members’ conduct.

3. Mr Alan LEONG added that in providing Members with more detailed and comprehensive guidelines, the Committee did not suggest that there was something wrong with Members’ conduct. Likewise, the Judiciary published the Guide to Judicial Conduct not because it had found something wrong with the judges’ conduct. Instead, its purpose was to make known to the public that the conduct of judges was subject to very strict standards.

Clerk 4. At the Chairman’s suggestion, members agreed to request the Secretariat to prepare a comparison table highlighting those guidelines in the Guide to Judicial Conduct which might be applied to Members after adaptation for members’ consideration at the next meeting. Ms Emily LAU proposed that members should consult Members of their respective political parties on amending the Advisory Guidelines.

Empowering the Committee to monitor Members’ Conduct

Clerk 5. Ms Emily LAU advised that LegCo had conducted two debates on resolutions to empower the Committee to monitor Members’ conduct and suggested that the Committee might ask the Secretariat to make copies of the verbatim transcripts of the debates for members’ reference. Members agreed to Ms Emily LAU’s suggestion. Ms Emily LAU further advised that views expressed by Members differed widely during the two debates and the two resolutions were ultimately negated. Given that the subject matter was

highly controversial, she considered that the unequivocal support of various political parties should be obtained before proceeding with the work in this respect so as to avoid wasting efforts.

Mechanisms in selected overseas legislatures for regulating members' misbehaviour

6. The Chairman then invited the Head (Research and Library Services) (H(RL)) to brief members on the information note, Mechanisms in Selected Legislatures for Regulating and Dealing with Members' Misbehaviour Unconnected with Parliamentary Proceedings, prepared by his division (LC Paper IN02/04-05 attached to Appendix I to LC Paper No. CMI/7/04-05). H(RL) pointed out that the four selected legislatures did not have any house rules on Members' misbehaviour unconnected with parliamentary proceedings but most legislatures had relevant code of conduct/guidelines. Offensive words or acts could constitute privilege issues in the legislatures of the four selected countries while there was no such rule in Hong Kong. In those four countries, only the House of Commons of the United Kingdom (UK) and the Parliament of Canada had independent officers to handle Members' misbehaviour unconnected with parliamentary proceedings. As to the disciplinary actions imposed on Members for violating the relevant rules, the four countries were fairly consistent i.e. requiring the Members concerned to make an apology.

7. Ms Emily LAU enquired about how the "Parliamentary Commissioner" of the House of Commons of UK was selected, the detailed terms of reference of the committees set up by various legislatures to deal with misbehaviour and how business was conducted in the absence of any rules. Research Officer 4 (RO4) responded that the post of Parliamentary Commissioner of the House of Commons of UK was usually held by a non-Member with legal background and the appointment should be endorsed by the House of Commons by voting. Ms Emily LAU further enquired about the nomination procedures in respect of the Parliamentary Commissioner. RO4 replied that the candidate was selected through consultation between the ruling party and the opposition party. H(RL) added that the guidelines on misbehaviour adopted by the selected legislatures were mainly concerned about the declaration of interests. In response to Ms Emily LAU's enquiry, RO4 supplemented that in the Parliament of Canada, both the Ethics Commissioner of the House of Commons and the Ethics Officer of the Senate were appointed in consultation with Members. Their terms of reference were confined to the monitoring of the declaration of interests. Ms Emily LAU requested the Research and Library Services Division (RLSD) to assist in collecting further information on the discharge of duties by the two officials. Mr Albert CHENG added that as he was familiar with the practice of the Parliament of Canada, he understood that Members' misbehaviour, both inside and outside the Chamber, was not subject to any regulation.

8. Mr Alan LEONG pointed out that the behaviour intended to be regulated should only be confined to the conduct of members in their capacity as such.

9. Members agreed to request RLSD to prepare a supplementary information note on the arrangements in selected overseas legislatures for regulating the Members' misbehaviour in the following aspects:

- (i) misbehaviour unrelated to declaration/conflict of interests which were subject to regulation;
- (ii) how was misbehaviour was regulated, and whether the regulation was advisory or mandatory in nature;
- (iii) how independent officers/committees responsible for handling misbehaviour were selected or formed; and
- (iv) code and rules based on which the independent officers/committees handled members' misbehaviour.

10. Members agreed to consult other Members and the public after the Committee had reached a conclusion with specific proposals.

II. The procedure for handling complaints received in relation to the registration and declaration of Members' Interests

11. The Chairman advised that the Committee on Members' Interests of the first term of LegCo had prepared "The procedure of the Committee on Members' Interests for handling complaints received in relation to the registration and declaration of Members' Interests" (the Procedure) in July 1999. She sought members' views on whether the Procedure should be issued to all LegCo Members for information. Ms Emily LAU agreed that the Procedure should be issued.

12. Ms Emily LAU informed members that a subcommittee under the House Committee (HC) of the last term had studied the handling of complaints and allegations concerning Members' Operating Expenses Reimbursement claims and had reached a conclusion. The subcommittee recommended that the terms of reference of the Committee be expanded to cover the handling of complaints in this respect. However, in the light of the imminent end of that LegCo term, HC decided not to implement the recommendation. Recently, HC had established a subcommittee to reconsider the subject. She was elected the Chairman of the subcommittee, which had also held a meeting recently.

13. Assistant Secretary General 3 (ASG 3) added that at present, the terms of reference of the Committee were limited to the handling of any complaint made in relation to the registration and declaration of Members' interests. He believed that if the subcommittee ultimately recommended

expanding the terms of reference of the Committee, the recommendation would be referred to HC and the Committee for discussion. Ms Emily LAU advised that as the subcommittee and the Committee comprised members of different political parties in LegCo, she hoped that members of both committees would put forward the specific recommendations to their own political parties for discussion with a view to seeking a consensus.

14. Ms Emily LAU proposed that when issuing the Procedure to all Members, the Committee might consider inviting them to submit their views. Mr Abraham SHEK enquired about the practice of the Committee of the last term. In response, ASG3 advised that the Committee of the last term had issued the Procedure to all Members for information but did not take the initiative to seek their views on the Procedure. The Deputy Chairman advised that one of the more controversial issues arising from the Procedure was that the Committee would not handle anonymous complaints. In conclusion, the Chairman said that as members of the Committee came from different political parties and Members could express their views at any time on their own initiative, it was not necessary to particularly remind Members to express their views when issuing the Procedure. Members agreed to issue the Procedure to all Members for information.

Closed meeting of the Committee

15. Ms Emily LAU suggested that the Chairman should explain to the media present at the meeting the objective of the closed meeting to be held immediately. The Chairman advised that the closed meeting was convened pursuant to Rule 73(1)(c) of the Rules of Procedure to handle complaints in relation to the registration and declaration of Members' interests. Mr Alan LEONG pointed out that according to paragraph 18 of the Procedure, the meeting should be held in camera.

III. Date of next meeting

Clerk 16. Members agreed that the second meeting would be held on 2 December 2004 at 2:30 pm.

17. The meeting ended at 9:55 am.