

立法會
Legislative Council

LC Paper No. CMI/134/04-05

Ref: CB(3)/C/2(04-08)

Committee on Members' Interests

**Minutes of the second meeting
held on Tuesday 19 April 2005 at 8:30 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. Confirmation of the Minutes of the last meeting held on 3 November 2004

(LC Paper No. CMI/21/04-05)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 3 November 2004 were confirmed.

II. Electronic mail message from Mr David WEBB

(LC Paper No. CMI/19/04-05)

(LC Paper No. CMI/31/04-05)

2. The Chairman invited members' views on how the electronic mail message from Mr David Webb, a member of the public, to the clerk concerning the educational qualifications claimed by a Member of the Legislative Council (LegCo) should be handled. In response to Ms Emily LAU's enquiry, Senior Assistant Legal Adviser 1 (SALA1) said that, among the Committee's terms of reference set out in Rule 73 of the Rules of Procedure, Rule 73(1)(d) might be most relevant to the case in question, which was "to consider matters of ethnics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters." The clerk added that the Committee had issued to all Members a set of *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* (Advisory Guidelines). She then drew members' attention to paragraph I(1) of the guidelines, which read:

"(a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council."

3. The clerk continued to brief members that the Committee in the Second Term LegCo had considered two complaints about some Members' specific conduct, and concluded that investigating and forming views on the conduct of individual Members were outside the scope of its terms of reference. Assistant Secretary General 3 (ASG3) added that the Advisory Guidelines were only advisory in nature and had no binding effect on Members.

4. Referring to a case handled by the former Committee in which a Member made an undesirable gesture towards a crowd outside the LegCo building, Ms Emily LAU said that she could not understand why the Committee had not concluded that such an act had brought discredit upon the LegCo. The Chairman pointed out that the former Committee had concluded that it had no power to investigate and form views on the conduct of individual Members. Ms Emily LAU enquired whether or not a Member whose conduct was the subject of a complaint could be invited to give explanations to the Committee. ASG3 responded that, given that it had no power to investigate the conduct of Members, the Committee would need to consider if it was appropriate and fair to invite the Member concerned to give explanations.

5. Mr Alan LEONG said that it was difficult to enforce the Advisory Guidelines as they were only advisory in nature and there were no precedents to follow. He agreed that the Committee had no power to form views on the conduct of individual Members.

Clerk 6. The Chairman concluded that the Committee had no jurisdiction to take on the case raised by Mr Webb. Ms Emily LAU proposed that a reply be sent to him explaining that the Committee had no jurisdiction on the case. Members agreed.

[Post meeting note: The clerk sent a reply to Mr David Webb in the form of an e-mail message on 20 April 2005]

III. Review of 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”

(LC Paper No. CMI/17/04-05)

(LC Paper No. CMI/30/04-05)

Monitoring Members’ conduct

7. Ms Emily LAU advised members that the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims (Subcommittee), of which she was the Chairman, had met on the previous day, and were supportive of the idea of setting up a mechanism to investigate complaints against Members concerning their reimbursement claims for operating expenses, but not those concerning the other conduct of Members. In this regard, she said that she was personally in favour of setting up a mechanism to deal with both types of complaints, and she pointed out that some other overseas legislatures had such a mechanism. She then invited members of the Committee to consult Members of their respective political parties on their inclination regarding the Subcommittee's view. ASG3 reminded members of the two debates conducted in 1995 and 1996 on proposed resolutions to empower the Committee to monitor Members’ conduct. During the debate, two principal arguments against the resolution were:

- i) it would be very difficult, if not impossible, to lay down an exhaustive and comprehensive list of acceptable and unacceptable conduct for Members to follow; and
- ii) the new power then proposed to be given to the Committee might be abused by some Members against Members of other parties, and it should be left to the electors to decide whether or not to vote in a Member whose conduct was the subject of a complaint.

8. Ms Emily LAU said that she agreed that it was difficult to garner enough support from Members for setting up a mechanism to monitor Members' conduct, and such a proposal should not be taken forward unless there was a clear and loud message for it.

9. The Chairman then asked if the Subcommittee had deliberated the matter from the aspect of the credibility of any investigation, given that members of the Committee were all fellow Members of the complainee. In particular, she asked whether the Committee, in undertaking investigation, would be perceived by the general public as Members conducting investigation against Members, and would have to make extra efforts in order to be seen to be just. Ms Emily LAU replied that the Subcommittee had considered two approaches adopted by other legislatures. In the legislatures of United Kingdom (UK) and Canada, complaints concerning Members' operating expenses reimbursement were handled by independent officers. In the legislatures of the United States of America (US) and Australia, such complaints were handled by a parliamentary committee. After discussion, the majority of the members of the Subcommittee favoured the latter approach because:

- i) given the small size of the Hong Kong legislature, it might not be cost-effective to hire an independent officer to handle such complaints, as it was expected such complaints would be infrequent; and
- ii) the conclusions and recommendations made recently by the Committee on the cases of Hon James TO's failure to register his interests with the Clerk to LegCo were not perceived to be biased by Members and the community at large.

10. Referring to the information note of reference (ref. no.: IN08/04-05) prepared by the LegCo Secretariat, Ms Emily LAU noted that, among the selected legislatures, Hong Kong was the only place which had not adopted any code of conduct which was binding on Members. The clerk then briefed members that in Hong Kong, provisions which were intended to be binding on Members, such as the requirements on registration and disclosure of interests, were set out in the Rules of Procedure. Research Officer 4 (RO4) added that the information note set out detailed comparison of the key contents of the Advisory Guidelines with those codes of conduct adopted by selected overseas legislatures, namely, the UK, US and Canadian parliaments. Comparisons were made in the following aspects:

- (a) purpose, scope and effect;
- (b) guiding principles/general standards;
- (c) registration of interests and acceptance of bribes, gifts or other benefits;
- (d) ways to handle pecuniary interest in parliamentary proceedings and use of information relating to parliamentary duties; and

- (e) use of the status of a Member, stationery relating to legislature, as well as allowances.

The Committee noted that the US's Code of Official Conduct had a stipulation on the use of stationery relating to legislature, which resembled a requirement in the Guide to Judicial Conduct adopted by the Judiciary of Hong Kong. In reply to Ms Emily LAU's question on whether these overseas legislatures had adopted more detailed guidelines on conduct than those set out in Table 2 of the information note, RO4 said they had not. ASG3 added that the selected legislatures had entrusted certain committee with powers to investigate alleged breach of code of conduct.

11. The Deputy Chairman said that it took hundreds of years for the US and UK parliaments to establish their regulatory regimes, which were refined from time to time. Also, the number of their parliamentarians was much larger than the Hong Kong legislature. He considered it difficult to establish in Hong Kong a comprehensive regulatory system at one go. He preferred taking the pragmatic approach of setting up specific rules and guidelines where problems had surfaced. In this regard, he would agree to go for tightening the rules regarding the reimbursement claims of expenses by Members at this stage.

12. Mr Alan LEONG considered that, in the long term, a mechanism should be set up to deal with various aspects of Members' conduct. As such a mechanism might take time to set up, he would prefer taking the pragmatic approach of plugging loopholes where they appeared. For example, rules should be laid down to require a Member to disclose whether he had any interests in a property in respect of which he was claiming rental reimbursements, and that he should provide evidence that he was not claiming a reimbursement of rental expenses above the market level.

Review of the Advisory Guidelines

13. The Chairman sought members' views on whether and how the Advisory Guidelines should be refined. Ms Emily LAU said that while they might be refined, they would still be useless if they had no binding effect. Mr Alan LEONG said that in accordance with Rule 73(1)(e) of the Rules of the Procedure, it should be within the Committee's jurisdiction to revise the Advisory Guidelines to provide for specific guideline, for example, on claims of educational qualifications by Members. However, he considered that it might not be easy to draw up such a guideline. While there could be doubts on the academic standing of degrees conferred by universities referred to as "diploma mills" by the US Government Accountability Offices, the fact remains that the Member concerned did earn the degrees from these universities. It would be difficult to draw a line to distinguish these degrees from those awarded by other universities. The Chairman said that the Committee was tasked to give advice and to issue guidelines on matters of ethics in relation to the conduct of Members, which should be applicable to all. Mr Alan LEONG agreed with the

Chairman and said that Advisory Guidelines might be refined in the light of specific incidents, if the Committee deemed it necessary.

14. The Deputy Chairman suggested adding a provision to the Advisory Guidelines to require Members to ensure that information provided by them, such as academic qualifications, was accurate. Ms Emily LAU said that although this requirement might be taken as targeting at individual Members, she considered it advantageous to add this in. Mr Abraham SHEK said that he did not see that disclosure of details of educational qualifications or otherwise would have any impact on the reputation of the Council. The Deputy Chairman said that the most important matter was that Members should ensure the accuracy of their personal information.

Clerk,
members

15. The Chairman asked the Secretariat to draw up a draft guideline on the Deputy Chairman's proposal for members' consideration at the next meeting. Mr Alan LEONG said that members might consult their respective parties on how the Advisory Guidelines should be refined before the next meeting.

16. Mr Albert CHENG said that the Committee should work within its terms of reference. He considered that it might not be useful to draw reference from overseas legislatures. The ultimate sanction on a LegCo Member's misbehaviour would be for voters to vote him out of office at the next election.

Drawing reference from the Guide to Judicial Conduct

17. Ms Emily LAU said that the Advisory Guidelines might be refined by drawing reference from the Guide to Judicial Conduct. She considered the paragraphs with italic and bold highlighting might be adapted for inclusion in the Advisory Guidelines. Although the principles enshrined in these paragraphs were obvious and the Advisory Guidelines were not enforceable, they could serve as a benchmark in case an investigation committee was set up to investigate a Member's conduct which was considered outrageous. The Deputy Chairman said that as judges and LegCo Members differed in terms of method of appointment and roles, it would be inappropriate to apply the ethical standards expected of judges on LegCo Members. In particular, he considered it inappropriate to ban LegCo Members, as judges were banned, from visiting karaoke, bars and casinos. It would be up to electors to show if they approved of such behaviours.

18. Mr Albert CHENG agreed that some of the provisions of the Guide to Judicial Conduct might be adapted for incorporation into the Advisory Guidelines. However, he pointed out that judges and LegCo Members were of different social standing and had different functions. Sometimes Members had to use letterheads showing their position as Members in order to exert influence when they wrote letters arising from complaints from members of public. The Chairman said that it might not be advisable to take a piecemeal approach to copy some of the provisions of the Guide to Judicial Conduct for the Advisory

Guidelines. Mr Alan LEONG considered that it might be too demanding and inappropriate to ask Members to observe the conduct expected of judges. He did not object, in principle, to incorporate, after adaptation, into the Advisory Guideline the provisions in the Guide to Judicial Conduct highlighted by the clerk.

Registration requirements for directorships

19. Mr Albert CHENG said that members of the public were most concerned if Members had derived financial gains from their capacity as Members. He considered that there was a loophole in the requirements of Members' registering their directorships. While Members were required to register any remunerated directorships, they were not required to disclose the amount of remuneration or other material benefits derived from such directorships. Therefore, business consortia might discreetly provide financial rewards to Members by appointing them as non-executive directors and paying them high honorarium. He considered that Members should be required to disclose the remunerations they received from the directorships so that members of the public could judge if the remunerations concerned were reasonable. This requirement would apply to Members receiving honorarium from unlisted companies as well. A dormant company might be set up as a vehicle to channel funds to Members by paying the latter honorarium for directorships or non-professional consultation services. Ms Emily LAU said that she agreed with Mr Albert CHENG in principle. However, she proposed that the LegCo Secretariat should conduct a research on the scope of the information required to be disclosed by parliamentarians of other jurisdictions, and the factors which had been taken into consideration in making the determination. The Deputy Chairman concurred. Head (Research and Library Services)(H(RL)) undertook to find out such information.

H(RL)

Registration of benefits received from political parties

20. Mr Abraham SHEK said that the benefits a Member received from the party to which he belonged should also be registrable. Ms Emily LAU said that, according to her understanding, Members were required to register donations received from political parties, but political parties were not required to register donations they received. Mr Abraham SHEK said that Members might receive pecuniary and non-pecuniary benefits from political parties. In response to Ms Emily LAU's enquiry, the clerk said that Members were required to register cash subsidy of \$5,000 or above a month and material benefit exceeding \$10,000 in value. In order to err on the safe side, many Members did register benefits of much lower value than these thresholds.

IV Date of next meeting

21. Members agreed to continue to discuss at the next meeting to be held on 7 June 2005 at 2:30 pm, instead of 26 April 2005 at 8:30 am as originally scheduled.

22. The meeting ended at 10:07 am

Council Business Division 3
Legislative Council Secretariat
17 May 2005