

立法會
Legislative Council

LC Paper No. CMI/32/05-06

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

Committee on Members' Interests

**Minutes of the sixth meeting
held on Friday, 17 February 2006 at 10:45 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 LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG

**Member absent
with apologies** : Hon Abraham SHEK Lai-him, JP

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

Staff in attendance : Mr Ricky FUNG, JP
Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Ray CHAN
Assistant Secretary General 3

Mr Arthur LEUNG
Senior Council Secretary (3)1

I. Confirmation of the minutes of the last meeting held on 20 January 2006
(LC Paper No. CMI/18/05-06)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 20 January 2006 were confirmed.

II. Review of the registration requirements for remunerated directorships
(LC Paper No. CMI/19/05-06)

2. The Chairman recapped that at the last meeting, the Committee had:
- (a) agreed in principle to implement Mr Albert CHENG's proposal to tighten up the registration requirement for remunerated directorships, by stipulating that Members shall register the names of the parent companies of the companies in which they hold remunerated directorships; and
 - (b) endorsed the draft amendments to Rule 83(5)(a) of the Rules of Procedure (RoP) and Page 1 of the Registration Form on Members' Interests (Registration Form), set out respectively in LC Papers Nos. CMI/7/05-06 and CMI/8/05-06.

The Committee had also decided that the views of all Legislative Council (LegCo) Members be sought before proceeding further. The Chairman then asked the clerk to report on the views collected.

3. The clerk referred the Committee to LC Paper No. CMI/19/05-06, which summarized Members' views. Among the 55 Members who returned the reply slip:
- (a) 53 Members were in support of the proposal to stipulate that Members should register the names of the relevant parent companies, and the remaining two did not express any views; and
 - (b) 27 Members signified support for the draft amendments to the RoP and Registration Form, and the rest did not express any views.

In short, Members generally supported the proposals of the Committee.

4. In reply to the Chairman's enquiry, the clerk said that the resolution to amend Rule 83(5)(a) of the RoP could be moved at the Council meeting on 8 March 2006 at the earliest. The Chairman said that she would be out of town on that day. The clerk said that given that the Council meetings commencing respectively on 22 and 29 March 2006 would be dedicated to the debate on the Budget, the resolution might be moved at the immediately following Council meeting on 26 April 2006. Ms Emily LAU asked if the resolution could be moved at the Council meeting on 29 March 2006. The Deputy Chairman said that it was the tradition of the Council that at the Council meeting at which the debate on the Budget took place, no other business would be conducted, save for

time-critical business. Ms Emily LAU said that if the scrutiny period of the subsidiary legislation which banned the backyard poultry keeping activities was extended by resolution, the last day for amending or repealing the subsidiary legislation would be 29 March 2006. There might therefore be business other than the Budget debate to be dealt with at the Council meeting on 29 March 2006. The Chairman commented that there was no urgency to move the resolution to amend the RoP. She suggested, and members agreed, that the LegCo Secretariat should consider a suitable meeting date for moving the resolution.

III. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims
(LC Papers No. AS89/05-06 and CMI/20/05-06)

Proposed amendments to the RoP

5. Senior Assistant Legal Adviser (SALA1) said that the drafting of the proposed amendment to Rule 73(1)(c) and new Rule 73(1)(ca) of the RoP had been revised, as set out in LC Paper No. CMI/20/05-06, in the light of members' views expressed at the last meeting.

6. Referring to paragraph 5.1 of LC Paper No. CMI/23/05-06 issued for the next agenda item, Ms Emily LAU said that the powers and functions of the Select Committee on Members' Interests of Dáil Éireann (i.e. House of Representatives) of the Parliament of Ireland (Select Committee), were set out clearly, which included that the Select Committee:

- (a) might carry out an investigation on its own initiative;
- (b) if in the course of an investigation it was found that the member concerned did not contravene the section of the Ethics in Public Office Acts to which the complaint related, but might have contravened another, it might investigate the latter contravention;
- (c) should not carry out an investigation if the person concerned was no longer a member, unless requested by the person under complaint to carry out or continue with the investigation; and
- (d) might discontinue an investigation at its own discretion if it considered that the complaint was frivolous or vexatious.

She enquired if the Committee had ever discussed the issues of carrying out an investigation on its own initiative and the handling of anonymous complaints.

7. The clerk replied that it could be read from Rule 73(1) of the RoP that the Committee had to act upon a complaint and this had been the case since the Committee was first established. Also, it was provided in The Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration and Declaration of Members' Interests (the Procedure) that anonymous complaints would not be handled. Assistant Secretary General 3 (ASG3) said that the Committee in a previous term had consciously decided that it should only act upon a complaint, which might also be lodged by a Member. The Chairman said that the provision that the Committee should act only upon a complaint was consistent with the view that Members were also subject to scrutiny by members of the public. The Deputy Chairman added that one of the considerations of the Committee was that where the Committee was dominated by a political party, the Committee would less likely be used, or seen to be used, as a platform to persecute opponents if it only acted upon a complaint. Mr LI Kwok-ying said that if the Committee carried out an investigation on its own initiative, the member proposing an investigation should not be allowed to take part in the investigation as he might have already taken a view on the case. On balance, he considered that the Committee should not carry out an investigation on its own initiative.

8. Ms Emily LAU said that given that the Select Committee of the Irish Parliament was empowered to carry out an investigation on its own initiative, there might be merits in such an arrangement. Mr Alan LEONG said that the Ethics in Public Office Acts provided the legal basis for initiating investigations by the Select Committee, which was not the case for the Committee. Also, as members of the Dáil Éireann were returned by the general elections, the persecution of minority members was less likely to occur as all members were subject to public scrutiny. Moreover, where a Member lodged a complaint against another Member, it was his duty to come up with some basis for lodging the complaint. If the Committee were to carry out an investigation on its own initiative, a separate mechanism might need to be put in place to frame a complaint as there was no complainant. SG said that if the Committee were to carry out an investigation on its own initiative, it might be performing both the roles of prosecutor and adjudicator, which might be unfair to the Member under investigation.

9. Mr Albert CHENG said that there were few obstacles impeding members of the public to lodge a complaint with the Committee. If a Member considered that a case was worth pursuing, he might lodge the complaint, either in his own name or ask any member of the public to do so. Hence, he considered that there was no need to provide for the Committee with the power to carry out an investigation on its own initiative. Ms Emily LAU said that after considering other members' views, she would not pursue the matter for the time being.

A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council

10. SG said that the revised version of A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council (the Guide) had been issued to all Members by the Principal Council Secretary (Administration) on 27 January 2006 under LC Paper No. AS89/05-06. The revisions, which were sidelined in the paper, aimed at removing any ambiguities about the nature (i.e. mandatory or advisory) of the provisions.

11. Ms Emily LAU asked if Members had been consulted before the revised Guide was issued. SG replied that Members had been consulted on the underlining policy but not on the drafting of the Guide. Ms Emily LAU said that the drafting was no less important than the policy. SG responded that two rounds of briefings with Members' assistants had been conducted. SALA1 added that the Guide had been drawn up in accordance with the principles for reimbursement of Members' operating expenses (OER) laid down by the Independent Commission on Remuneration for the Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region (Independent Commission on Remuneration) appointed by the Government. Its primary purpose was to provide practical guidance for Members in making OER claims. The Subcommittee on Members' Remuneration and Operating Expenses Reimbursement, chaired by Hon Patrick Lau Sau-shing, had taken on board some of the recommendations of the Independent Commission Against Corruption with respect to the provisions in the Guide. The Subcommittee's recommendations as contained in its third report submitted to the House Committee were endorsed by the latter at its meeting on 8 July 2005. The latest revisions to the Guide were technical in nature and were made in the light of the proposed new Rule 73(1A), which provided that in considering or investigating a complaint relating to OER claims, the Committee should have regard to the provisions of the Guide. SG said that he always welcomed Members' views and suggestions to fine-tune the Guide, so long as it did not deviate from the principles laid down by the Independent Commission on Remuneration.

12. Mr Albert CHENG said that as the Accounts Office of the Secretariat had been scrutinizing Members' OER claims closely, he was not too worried that Members would inadvertently breach the provisions in the Guide. However, every Member was ultimately responsible for the OER claims he made. Both the Deputy Chairman and Ms Emily LAU expressed appreciation of the work of the Accounts Office.

13. The Chairman suggested, and members agreed, that the proposed amendments to the RoP as set out in LC Paper No. CMI/20/05-06 be endorsed by the Committee. Members also agreed that all Members be consulted on the amendments, together with the revised Procedure to be finalized later.

Procedure for handling complaints relating to OER claims

Paragraph 2 of the Procedure

14. The clerk recapped that it was decided at the last meeting that:
- (a) subparagraph (d) be deleted from paragraph 2;
 - (b) subparagraph (f) be accepted in the way it was drafted; and
 - (c) the word “決定”(decide), where it appeared for the second time in paragraph 2 be replaced, by “考慮”(consider).

Proposed new paragraph 8 of the Procedure

15. The clerk reported that the new paragraph 8 provided that the Committee should, in addition to any other matter that the Committee might consider relevant, have regard to the provisions of the Guide. Members did not raise any objection to the proposed paragraph.

Paragraph 9 (original no.:8) of the Procedure

16. The clerk reported that paragraph 9 was amended to add a new provision that:
- (a) the Member under complaint might be accompanied and advised by his legal adviser, but he had to give explanations and provide information himself, and not through the legal adviser; and
 - (b) the legal adviser might not address the Committee.

17. Ms Emily LAU enquired about the precedents in which a Member under complaint was accompanied by a legal adviser. The clerk replied that there had been cases in which witnesses summoned by select committees were accompanied by their legal advisers. Ms Emily LAU asked if the Member under complaint might be accompanied by another Member who was a lawyer by profession. SALA1 replied that this was not allowed if the accompanying Member was attending the hearing in the capacity as a legal practitioner, as it had been provided in Rule 82 of the RoP that no Member should appear before the Council or any committee or subcommittee in a professional capacity for or on behalf of a party. Ms Emily LAU said that since the accompanying person would give advice in private to the Member under complaint, it would be

difficult to prevent the accompanying Member, who was a lawyer by profession but attending the hearing in another capacity, from offering legal advice to the Member under complaint.

18. Mr Albert CHENG raised for discussion the question of whether the Member under complaint should be allowed to bring a person other than a legal practitioner. The Deputy Chairman said that the Member under complaint should be allowed to bring any person(s) but a limit might be imposed on the number of accompanying persons. Since many Members had delegated their work on making OER claims to their assistants, they might need to be accompanied by their assistants to help them with the details of OER claims. SALA1 said that such assistants might also appear before the Committee as witnesses. Mr Albert CHENG said that a personal adviser should be allowed to accompany the Member under complaint to a hearing. SG said that in the practice of disciplinary proceedings in the civil service, the accused officer was allowed to invite a friend or colleague to assist him in a disciplinary inquiry hearing. Mr Albert CHENG said that reference might be drawn from the practice of disciplinary proceedings in the civil service.

19. SG said that it appeared from the information provided in LC Paper No. CMI/23/05-06 that for the Irish Parliament, a member under complaint might even be allowed to have a representative to present his case on his behalf. The Deputy Chairman said that reference should be drawn from the practices of overseas legislatures before making a decision on the point. Ms Emily LAU cautioned that care should be taken in drawing reference from overseas legislatures, which might have vastly different political settings. SALA1 drew members' attention to Appendix II to LC Paper No. AS335/04-05, issued for the third meeting. In the House of Commons in Canada and the House of Representatives in the United States, legal representation was allowed. In the House of Commons in the United Kingdom and the House of Representatives in Australia, legal representation was not allowed but the Member under complaint might be accompanied by, and confer with, counsel. Mr Albert CHENG added that as far as he knew, in the case of Canada, the legal adviser might be a law professor who was not a practising lawyer. The clerk undertook to provide more information on the practices of overseas legislatures for members' reference at the next meeting.

clerk

Paragraph 10 (original no.: 9) of the Procedure

20. The clerk said that paragraph 10 had been revised to provide that the Committee might decide not to proceed with an investigation on the ground that there was no prima facie case or on such other grounds that the Committee thought fit. The amendment aimed at providing more flexibility for the Committee to decide whether or not to proceed with an investigation. The

Deputy Chairman said that this would give the Committee too much discretion, which might be criticized by some members of the public. Ms Emily LAU said that the practice of the Irish Parliament might be followed, in which a written decision of the Select Committee would be sent to the Member under complaint and the complainant. The clerk stated that this had already been provided for in paragraph 18 (original no.: 16) of the Procedure. Mr Albert CHENG said that if the Committee decided not to proceed with an investigation because it was unsubstantiated, it would have to come up justifications for that decision. Hence he suggested, and other members agreed, that the original wording of the paragraph be kept.

Paragraph 12 (original no.11) of the Procedure

21. The clerk reported that textual amendments had been proposed to paragraph 12 to make the Chinese version tally with the English version. She proposed the phrase “在該類聆訊上” in the Chinese version be further amended to “在該研訊中”. Members agreed.

Paragraph 13 (original no.:12) of the Procedure

22. Noting that the amendments were similar to those set out in paragraph 9 of the Procedure, which had been discussed earlier, members agreed that a decision on the paragraph be deferred to the next meeting.

New paragraph 14 of the Procedure

23. The clerk reported that the purpose of the proposed paragraph was to provide that if, during the preliminary consideration or the investigation stages, the Committee had come to the knowledge that the complaint or related matters was/were being investigated by a law enforcement agency, or was/were relating to a case pending in a court of law, the Committee might suspend its investigation until the conclusion of the such investigation or legal proceedings. Mr Albert CHENG proposed that the phrase “may suspend” be replaced by “may consider suspending” so as to set out more clearly that the Committee was not obliged to suspend its investigation in those circumstances. SALA1 said that the Committee would have already taken due consideration before it came up with the decision to suspend its work. Members agreed to use the original wording of the proposed paragraph.

Paragraph 15 (original: 13) of the Procedure

24. The clerk said that the amendments to paragraph 15 provided for an additional ground for deciding that a complaint was substantiated, which was that the Member under complaint had fallen short of the standard expected of a Member in handling OER claims. Ms Emily LAU said that the Committee's previous report on Hon James TO's case had adopted such a line of thinking. As there were rules in the RoP stipulating that Members should register or declare registrable interests, which provided for the basis of the grounds on which complaints were substantiated, she enquired if the standard of conduct should also be set out in the RoP.

25. Mr Albert CHENG said that different people might have different expectations on Members and a Member should not be sanctioned only for not meeting the expectations of a particular group of people. SALA1 said that there might be cases in which there were insufficient evidence to substantiate a case, yet the conduct of a person might be judged by his peers to be unacceptable. The standard of conduct therefore provided a benchmark against which the conduct of a Member might be judged. The Deputy Chairman said that the standard of conduct might be set out in the Guide. He also suggested that the wording of the paragraph should follow that of the proposed Rule 73(1A) of RoP as closely as possible. The Chairman said that the principles laid down for OER claims might be set out in the paragraph. SALA1 undertook to review the drafting of the paragraph.

SALA1

Paragraph 16 (original: 14) of the Procedure

26. SALA1 explained that the purpose of the proposed amendment was to limit the information which the Member under complaint might submit during a review of his case, to those which could not have been obtained by him with reasonable diligence. This limitation was also imposed in criminal proceedings, so as to discourage the accused from withholding certain information during the initial trial. The Deputy Chairman said that he supported the proposed amendment in principle, but he suggested that the drafting of the Chinese version should be improved.

SALA1

Paragraphs 17 and 19 (original nos. 15 and 17) of the Procedure.

27. Members agreed to the technical amendments proposed to paragraphs 17 and 19.

IV. The proposal of the Select Committee on Members' Interests of Dáil Éireann, Lower House of the Parliament of Ireland (Select Committee) to hold a meeting with it in later March 2006

clerk

28. Members agreed in principle to hold a meeting with the Select Committee. Members also suggested that the meeting would be held at **11:00 am on 28 March 2006**, to be followed by luncheon with the delegation and relevant staff of the LegCo Secretariat at the China Club in the Old Bank of China Building. In reply to Ms Emily LAU, SG said that the expenses involved might be charged to the corporate liaison account of The LegCo Commission.

V Date of next meeting

29. As agreed at the last meeting, the next meeting would be held at 8:45 am on 3 March 2006.

30. The meeting ended at 12:28 pm.

Council Business Division 3
Legislative Council Secretariat
22 February 2006