

**立法會**  
**Legislative Council**

LC Paper No. CMI/38/05-06

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

**Committee on Members' Interests**

**Minutes of the seventh meeting  
held on Tuesday, 4 April 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 17 February 2006**  
(LC Paper No. CMI/32/05-06)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 17 February 2006 were confirmed.

## **II. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims**

(LC Papers No. CMI/33/05-06, LS53/05-06 and FS08/05-06)

2. The Chairman said that the Committee had yet to deliberate paragraphs 9, 13, 15 and 16 of the proposed revisions to The Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration and Declaration of Members' Interests (the Procedure). She invited members to consider LC Paper No. CMI/33/05-06.

### ***Paragraphs 9 and 13 (original nos. 8 and 12 respectively) of the Procedure***

3. The Chairman said that at the last meeting, members had considered the proposed additions to paragraphs 9 and 13 to provide that:

- (a) the Member under complaint might be accompanied and advised by his legal adviser, but he had to give explanations and provide information to the Committee himself, and not through the legal adviser; and
- (b) the legal adviser might not address the Committee.

Members had different views on whether the Member under complaint should be allowed to be accompanied by a person other than a legal adviser. In this connection, the Research and Library Services Division of the Legislative Council (LegCo) Secretariat had set out, in LC Paper No. FS08/05-06, the practices in selected overseas legislatures for members' reference.

4. Referring to paragraphs 2.1 to 2.4 of LC Paper No. FS08/05-06, Ms Emily LAU noted that different practices were adopted by the selected overseas legislatures. In the House of Commons of the United Kingdom (UK) and the House of Representatives of the Parliament of Australia, a Member under complaint might be accompanied by persons other than lawyers to attend inquiries, but only he himself was allowed to respond to enquiries. In the Canadian Parliament, a Member under complaint might be represented by counsel or by any other representative and, in the House of Representatives of the United States Congress, by counsel.

### **Legal representation in the Committee's inquiries**

5. Ms Emily LAU said that a Member under complaint should not be allowed to be represented by counsel, especially during the preliminary consideration stage. Mr Alan LEONG said that legal representation should not

be allowed as the inquiries conducted by the Committee were inquisitorial in nature, not adversarial as in a court a law. Secretary General (SG) said that at the last meeting, although members had different views on whether a Member under complaint might be accompanied by a person other than a legal adviser, they were of the unanimous view that such a person should not be allowed to address the Committee.

Allowing a Member under complaint to be accompanied by a legal adviser

6. The Deputy Chairman said that the practice of the UK Parliament should be followed.

7. Mr LI Kwok-ying said that he also considered that the inquiries of the Committee were inquisitorial in nature and he expected a Member under complaint would co-operate with the Committee. The role of an accompanying legal adviser would include advising the Member under complaint whether his answers to questions might incriminate himself. The presence of a legal adviser might place members of the Committee, who generally had no legal training, in a disadvantaged position, especially in framing questions to be put to the Member under complaint. He raised for discussion the impact on the Committee's work of allowing the Member under complaint to be accompanied by a legal adviser.

8. Ms Emily LAU pointed out that, in all the four selected overseas legislatures, legal practitioners were allowed to accompany the Member under complaint, and in two of the legislatures, the legal practitioner might even represent the Member under complaint. She enquired if the interests of the Member under complaint would be fully protected if he was not allowed to be accompanied by a legal adviser. Senior Assistant Legal Adviser 1 (SALA1) said that the purpose of allowing a Member under investigation to be accompanied by a legal adviser was to ensure fairness to him in the inquiry. The benefit of the presence of a legal adviser to the Member would depend on the nature of the inquiries, the experience and background of the Member under complaint as well as the role of the accompanying legal adviser. He envisaged that the role of the legal adviser would be to advise the Member the implications of his answers to the Committee.

9. The Chairman said that law enforcement agencies might be conducting concurrent investigations into the same subject matter, or related matters, of the complaint against the Member concerned. The legal rights of the Member under complaint who had received no legal training might be jeopardized if he was not allowed to be accompanied by a legal adviser.

10. Mr Alan LEONG said that there was a gap between reality and presumption regarding people's knowledge in laws. Allowing a Member under

complaint to be accompanied by a legal practitioner would help bridge the gap. Also, the Member who was accompanied by a legal adviser would have no excuse for avoiding answering questions by claiming that he had to first seek legal advice.

11. Ms Emily LAU said that safeguards might need to be put in place to prevent the efficiency of the Committee's inquiries from being seriously hampered by the Member under complaint taking too much time in conferring with his legal adviser. The Deputy Chairman said that he was not too worried about this, and he considered it acceptable that the inquiries would take a longer time for the sake of protecting the legal rights of the accused. SALAI added that it was not uncommon for a court of law to adjourn upon application by the legal representative of the accused to seek instructions from his client, such as when a new issue was raised.

#### Right of Silence in the Committee's inquiries

12. Ms Emily LAU asked if there were provisions to deal with the situation in which the Member under complaint refused to answer any questions. SG considered that a Member under complaint should enjoy the right of silence. The clerk said that in the UK Parliament, if a Member under complaint chose to remain silent at a disciplinary hearing, the authorities concerned might take this into account when compiling their report. SALAI added that there was a provision in the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) that any person summoned under it by the Council or a committee would commit an offence if he refused to answer any lawful and relevant question put to him during the course of any examination, unless such refusal was allowable under that Ordinance.

13. The Deputy Chairman said that the basic right of the Member under complaint to remain silent should be respected. Mr Alan LEONG said that the Member under complaint should not be compelled to speak as he enjoyed the right of silence. However, there had been recent developments in the criminal procedures in the UK whereby the fact that the accused chose to remain silent could draw an adverse inference against him. Should the Committee adopt such an approach, there might be a need to consider whether this should be stated in the Procedure so that the Member under complaint would be aware of the consequence of remaining silent. Ms Emily LAU and Mr LI Kwok-ying concurred with Mr Alan LEONG.

SALAI

Allowing the Member under complaint to be accompanied by persons other than a legal adviser

14. The Deputy Chairman said that as the Member under complaint should be accountable for his claims for reimbursement of Members' operating expenses (OER), he should personally answer the Committee's questions. Yet, he might still need to consult his assistants before he could give correct answers to the Committee.

15. The Chairman said that as the Member under complaint was expected to be fully prepared before attending the inquiries, she doubted the need for his assistants to attend inquiries to give on-the-spot assistance. Also, Members' assistants might attend inquiries of the Committee in the capacity as witnesses. Ms Emily LAU responded that while she also expected the Member under complaint to be prepared, he might not be conversant with every single detail of the OER claims. The accompanying assistants would assist him in answering questions, although they should not be allowed to address the Committee. On the other hand, Members' assistants attending inquiries as witnesses would be answering questions put by the Committee. Mr LI Kwok-ying said that as OER claims were in practice handled by Members' assistants, allowing them to accompany the Member under complaint would facilitate the Committee's work as the Member under complaint would then be able to give more precise answers.

16. Referring to the practice of the UK Parliament, Assistant Secretary General 3 (ASG3) pointed out that it was possible for members to consider also stipulating that the Member under complaint might be accompanied by any person who, in the opinion of the Committee, would help advance the consideration of the complaint.

17. Mr Alan LEONG said that that the Member under complaint should be allowed to decide whether a legal adviser or a person of another profession should accompany him. The main function of an accompanying person other than a legal adviser was to assist him in sorting out the details of the OER claims. The number of accompanying persons should be kept to a minimum in order not to adversely affect the efficiency of the inquiries. Therefore he considered that the Member under complaint should be allowed to be accompanied, as of right, by a legal adviser and, subject to the agreement of the Committee, by any other accompanying persons.

18. Mr LI Kwok-ying said that the Member under complaint should be allowed, as of right, to be accompanied by a legal adviser and an assistant. Ms Emily LAU said that it might suffice to limit the total number of accompanying persons to three, and the Member under complaint should be allowed to decide whether or not to include a legal adviser. She said that she did not favour any

approach which would necessitate the Committee holding extra meetings to decide if a particular person nominated by the Member under complaint to accompany him would help advance the consideration of the complaint.

19. The Deputy Chairman said that the Member under complaint should be allowed to choose the person who, in his opinion, would be most helpful to him for presenting his case to the Committee. Also, it would be wasteful of the time of the Committee if it had to involve itself in deciding whether a particular person should be allowed to accompany the Member under complaint. He therefore favoured the approach suggested by Mr LI Kwok-ying. However, he considered that the number of persons other than the legal adviser should be limited to two. Mr LI Kwok-ying concurred.

20. The Chairman proposed, and members agreed, that before the Committee decided on the way forward at the next meeting, the Secretariat should set out the different options on the accompanying persons below, together with their pros and cons, be set out in a paper to the Committee so that members might consult the Members of their respective groupings:

- (a) a maximum of three persons may accompany the Member under complaint to appear before the Committee;
- (b) a legal adviser, plus any other persons as agreed by the Committee, may accompany the Member under complaint to appear before the Committee; and
- (c) a legal adviser, plus a maximum of two any other persons, may accompany the Member under complaint to appear before the Committee.

#### Confidentiality requirements for accompanying persons

21. The Chairman raised for discussion the question of how to guard against premature release by the accompanying persons of evidence taken before the inquiries. Ms Emily LAU said that the accompanying persons should be bound by the same confidentiality requirements imposed on Members and LegCo Secretariat staff. SALA1 said that Rule 81 of the Rules of Procedure (RoP) provided that the evidence taken before a committee under Rule 80 and documents presented to the committee should not, except in the case of meetings of the committee held in public, be published by a member of the committee or by any other person before the committee had presented the report to the Council. Any member of the committee who failed to comply with the rule might be admonished or reprimanded by the Council on a motion to that effect. ASG3 advised that the aforesaid sanctions were applicable to Members only.

SALA1

Ms Emily LAU said that the rule might be amended to extend the sanctions to any person other than a Member.

***Paragraph 15 (original no. 13) of the Procedure and new proposed rules of RoP***

22. The Chairman recapped that when the Committee considered paragraph 15 of the Procedure at the last meeting, Ms Emily LAU had enquired if the standard of conduct expected of a Member in handling OER claims should be set out in the RoP for Members to follow. In this connection, the Legal Service Division had proposed revised amendments to the RoP, as set out in LC Paper No. LS53/05-06.

23. SALA1 said that the proposed new Rule 83AA was to provide that, when making OER claims or applying for advance of operating funds, “a Member shall:

- (a) ensure that any information, declaration or certification provided or made is true, accurate and complete; and
- (b) act according to any undertaking that he has given.”

The proposed rule also covered acts relating to applications for advance of operating funds.

24. Noting that Rule 83AA(a) provided that any information provided should be “詳盡”(complete), the Deputy Chairman stated that it was always arguable whether a Member had complied with the rule as he would never know if he had provided enough details. For example, a Member might be accused of breaching the rule because of his failure to provide detailed breakdowns on the sundry expenses of an event for which he had made OER claims. SG said that it was possible that even though a Member had completed every part of the relevant forms for OER claims, he might not have provided all the relevant facts. For example, in making OER claims for an event, a Member might not disclose the facts that the event was held in collaboration with other parties, and that he was only making OER claims in respect of a portion of the expenses of the whole event. The Deputy Chairman suggested that the word “完備” might be more precise than “詳盡”, as it did not carry the meaning of “full details”. SALA1 responded that the Chinese text of the word “complete” was “詳盡” in various ordinances. Also, the meaning of the words “true, accurate and complete” in Rule 83AA(a) should be interpreted in the context of what was required to enable the approving officer to consider the claim concerned. Mr Albert CHENG and Mr Alan LEONG considered that there was no need to change the wording.

SALA1 SALA1 said that in view of members' concern, he would review if the Chinese rendition of the word "complete" could be replaced by "完整" or "完備".

25. Ms Emily LAU asked if the LegCo Secretariat would provide guidelines to Members for complying with the Rule. SG replied that guidelines on making OER claims together with actual examples had been issued to Members.

26. On the drafting of Rule 83AA, Mr Alan LEONG asked why a "／" had been used between the words "申報" and "聲明" in the Chinese version of paragraph (a). He also proposed that

- (a) paragraph (a) be rewritten to read "ensure that any information provided or any declaration or certification made is true, accurate and complete.", and
- (b) the word "根據" in the Chinese version of paragraph (b) be replaced with "依照", as the former had been used in the preamble of the rule.

SALA1 replied that the "／" was used in the Chinese version because both of the words "申報" and "聲明" were used in the Chinese version of A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council and the claim forms therein, in respect of the words "declaration" or "declare". Members agreed to the textual amendments proposed by Mr Alan LEONG.

27. SALA1 said that after review, the Legal Service Division suggested that the proposed Rule 85A be incorporated into the existing Rule 85. Members agreed to the suggestion. The clerk proposed a consequential amendment to delete the reference to Rule 85A in paragraph 17 of the Procedure. Members agreed.

28. The clerk said that paragraph 15 had been simplified by deleting the basis on which a complaint might be found substantiated. Members agreed to the new drafting.

### ***Paragraph 16 (original no. 14) of the Procedure***

29. Ms Emily LAU noted that an amendment was proposed to the paragraph to stipulate that in seeking a review of the Committee's decision that the complaint was substantiated, the Member under complaint was allowed to submit only such supplementary information which could not have been obtained by him with reasonable diligence. She enquired about the rationale for

restricting the information which might be submitted. SALA1 replied that the amendment was proposed on the basis of a similar limitation in appeal proceedings in courts, which disallowed the parties to introduce new evidence in appeals unless on good grounds. Ms Emily LAU said that the amendment might create additional work for the Committee as it would have to deliberate the admissibility of the information submitted by the Member under complaint. Mr Albert CHENG said that there was no need for the amendment as a time limit of seven working days had already been imposed and Members' behaviours were under the scrutiny of the public. The Chairman enquired if words similar to the proposed amendment had been used in the letters accompanying the draft reports sent to the witnesses who attended hearings of select committees. SG replied in the negative and suggested that the proposed amendment be dropped. The clerk added that when the Committee's draft report on a case of failure to register interests was sent last year to the Member under complaint for comment, the Member was also invited to note that he might submit information which was unavailable at earlier inquiries, pursuant to the original paragraph of the Procedure. Ms Emily LAU proposed, and members agreed, that the original paragraph be kept.

#### Consultation with Members

30. The Chairman recapped that it had been agreed at the last meeting that upon finalization of the Procedure, all Members would be consulted on the proposed amendments to the RoP and the revised Procedure. Ms Emily LAU said that the Committee might also invite all Members to express their views.

### **III. Date of next meeting**

31. Members agreed that the next meeting should be held on 2 May 2006 at 2:30 pm.

32. The meeting ended at 12:38 pm.