

立法會
Legislative Council

LC Paper No. CMI/44/05-06

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

Committee on Members' Interests

**Minutes of the eighth meeting
held on Tuesday, 2 May 2006 at 2:30 pm
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

As a quorum was present at 2:30 p.m., the scheduled meeting start time, and the Chairman and the Deputy Chairman of the Committee on Members' Interests (the Committee) had not yet arrived, the members present unanimously agreed that Ms Emily LAU should preside over the meeting temporarily until the arrival of the Chairman.

I. Confirmation of the minutes of the last meeting held on 4 April 2006
(LC Paper No. CMI/38/05-06)

2. The minutes of the last meeting of the Committee held on 4 April 2006 were confirmed.

II. Information paper issued since the meeting held on 4 April 2006
(LC Paper No. CMI/37/05-06)

3. Members noted the information paper LC Paper No. CMI/37/05-06 issued on 19 April 2006.

III. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims
(LC Papers No. CMI/33/05-06, CMI/36/05-06 and CMI/39/05-06)

Persons allowed to accompany a Member under complaint to appear before the Committee

4. The presiding member recapped that at the last meeting, the Committee had considered the proposed additions to paragraphs 9 and 13 of the Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration or Declaration of Members' Interests or Members' Claims for Reimbursement of Operating Expenses (the Procedure), which concerned the persons to be allowed to accompany a Member under complaint to appear before the Committee, and had decided that members should consult the LegCo Members of their respective groupings regarding their preference on the three different options detailed below:

- (a) Option 1: A Member under complaint may be accompanied by a maximum of three persons, whose attendance need not be subject to the Committee's prior permission;
- (b) Option 2: A Member under complaint may be accompanied by a maximum of one legal adviser and two other persons, whose attendance need not be subject to the Committee's prior permission; and
- (c) Option 3: A Member under complaint may be accompanied by a maximum of one legal adviser, whose attendance need not be subject to the Committee's

prior permission and, with the Committee's prior permission, any number of other persons.

5. The presiding member invited members to note members' returns which were summarized in LC Paper No. CMI/39/05-06, and also her own which was tabled at the meeting. In gist, members' views were as follows:

- (a) Option 1 was favoured by Ms Emily LAU, and she had consulted nine independent LegCo Members from the pan-democratic camp;
- (b) Option 2 was favoured by Mr SIN Chung-kai, Mr Abraham SHEK and Mr LI Kwok-ying, and they had consulted those LegCo Members who respectively belonged to the Democratic Party, the Alliance, and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB); and
- (b) Option 3 was favoured by Mrs Sophie LEUNG and Mr Alan LEONG, and they had consulted those LegCo Members who respectively belonged to the Liberal Party and Civil Party.

6. The presiding member said that none of the options had won the clear majority support of Members.

7. Mr LI Kwok-ying said that after tendering his return, he had also consulted Members who belonged to the Hong Kong Federation of Trade Unions (HKFTU). They favoured option 1, and suggested stipulating in the Procedure that a Member under complaint could not claim that he was unfairly treated on grounds that he had not been accompanied by a legal adviser, if he had chosen not to be so accompanied. He said that Members belonging to the DAB would also favour option 1 if this approach was adopted.

8. Mr Albert CHENG said that he favoured option 1 and supported HKFTU's suggestion. He pointed out that option 2, which specified that one of the three accompanying persons had to be a legal adviser, might be considered as discriminating against other professions. He also considered this unfair to a Member under complaint who did not have the resources to hire a legal adviser, since he would then be allowed to be accompanied by a maximum of two persons only.

(The Chairman arrived at 2:48 pm, and took over the chair)

9. Mr Albert CHENG said that disputes might arise between the Committee and a Member under complaint on whether or not a particular person accompanying him might be regarded as a "legal adviser". Senior Assistant

Legal Adviser 1 (SALA1) responded that if the Committee's intention was to have a qualified lawyer to advise the Member under complaint, then the drafting of the relevant rules could clearly specify this. A Member under complaint should be reminded of the right to be accompanied by a legal adviser at the time when he was invited to appear before the Committee so that he was clear about his right from the beginning. 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 role of the legal adviser would be to protect the legal position of the Member under complaint.

10. Mr LI Kwok-ying said that one of the functions of an accompanying legal adviser would be to advise a Member under complaint whether his statements might incriminate himself. The Member should be allowed to choose any person who, in his opinion, could protect his legal rights.

11. Mr Alan LEONG said that he would expect that a Member under complaint to be fully prepared before appearing before the Committee, and the main role of an accompanying person other than a legal adviser would be to provide assistance to the Member on the details of the claims which he had made under Members' operating expenses reimbursement (OER) scheme. He considered that the number of such accompanying persons should be kept to a minimum, and therefore their attendance be subject to the prior permission of the Committee. Otherwise, a Member under complaint might, in the extreme case, choose to be accompanied by a reporter.

12. Secretary General (SG) said that the more restrictive the rules on the accompanying persons, the more likely that a Member under complaint might seek a judicial review to challenge them. Ms Emily LAU said that the Members whom she had consulted favoured option 1 because it allowed a Member under complaint to choose, having regard to his own best interests, the persons to accompany him. Therefore, a person of whatever profession should be allowed, even if he was a reporter. Also, if a Member under complaint did not opt, under paragraph 18 of the Procedure, for the inquiry to be held in public, he and any accompanying persons should be bound by confidentiality requirements.

13. Mr Albert CHENG said that a person should not be disallowed to accompany a Member under complaint just because he was a reporter by profession, as he would be attending in another capacity, such as an assistant to the Member under complaint. Generally speaking, he considered the Committee's allowing a reporter to attend its inquiry held in camera would not pose a greater risk of its proceedings being divulged than persons of other professions.

14. SG proposed for the Committee's consideration that option 1 be amended to read "a Member under complaint might be accompanied by a maximum of three persons, including legal adviser(s)".

15. The Deputy Chairman said that he agreed to such an amendment, and he would support option 1 as amended by SG's proposal. He suggested that the Procedure be thus amended and all Members' agreement be sought for its adoption together with the related amendments to the Rules of Procedure (RoP). Other members agreed. The clerk said that under Rule 73(7) of RoP, the procedure of the Committee was to be decided by the Committee. Assistant Secretary General 3 (ASG3) said that a resolution had to be passed at a Council meeting to amend the relevant rules of the RoP to empower the Committee to deal with complaints relating to OER claims. Ms Emily LAU said that the Committee should consult all Members before it determined the Procedure and proposed amendments to RoP.

Confidentiality requirements to be imposed on accompanying persons

16. The Chairman sought members' views on how to guard against the Committee's confidential proceedings being divulged by the accompanying persons who were not subject to Rule 81 of the RoP which governed Members only. The Deputy Chairman said that he was not too concerned about this as a Member under complaint could always request that the inquiry be conducted in public. Ms Emily LAU said that all participants in inquiry held in camera should be bound by confidentiality requirements. She considered that Members divulging the Committee's proceedings constituted misbehaviour and should be censured under Article 79(7) of the Basic Law, and other persons divulging such information should be reprimanded by the Council on a motion to that effect.

17. Mr Albert CHENG said that the Public Accounts Committee (PAC) had deliberated at length the problem of confidential information being divulged, and all PAC Members had signed a confidentiality undertaking. ASG3 said that the scope of Rule 81(1) of the RoP was restrictive in that it related only to premature publication of evidence taken before a committee and documents presented to the committee. PAC members were also concerned about the proceedings of PAC meetings being divulged, and this was now a broader issue to be examined by the Committee on Rules of Procedure (CRoP).

18. Ms Emily LAU said that an independent competent body should be set up to investigate any leakage of confidential information. Mr Albert CHENG said that the sensitive issue of political persecution would arise if an outside body was brought in to undertake the investigation, and LegCo Members were accountable mainly to electors. Ms Emily LAU said that the House Committee should be requested to appoint an investigation committee, whose

membership and supporting staff were independent of the committee from which confidential information had been divulged.

19. SG said that it would take some time before CROp completed the related study. He suggested the Committee consider adding in the Procedure provisions about the requirement to keep confidential information. The clerk proposed that provisions might be added under the Confidentiality Requirement section of the Procedure to require any persons attending inquiry of the Committee held in camera to sign a confidentiality undertaking, with the consequence that, if they were found to have breached the undertaking, they might be reprimanded by the Council on a motion to that effect. Members agreed.

The situation in which a Member under complaint remained silent when appearing before the Committee

20. The Chairman sought members' views on how to deal with the situation in which a Member under complaint remained silent when appearing before the Committee.

21. Referring to paragraph 13 of the minutes of the last meeting, the clerk said that Mr Alan LEONG had told the meeting that there had been recent developments in the criminal procedures in the United Kingdom (UK) whereby the fact that the accused chose to remain silent could draw an adverse inference against him. He had also said that 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.

22. Mr Alan LEONG added that in UK, when summing up the case, the prosecution might draw the attention of the jury to the fact that the accused had chosen to remain silent. SALA1 explained that under common law, where there was established a prima facie case in which the accused was reasonably expected to give explanations but he did not, the fact that he remained silent might be taken by the adjudicating authority as a factor reinforcing the case. However, silence in itself was not evidence of the alleged conduct and would not relieve the prosecution of the burden of proof.

23. Mr LI Kwok-ying disagreed that it should be mentioned in the Procedure that an adverse inference could be drawn against a Member under complaint if he remained silent, as this would give the public the impression that the Committee was not handling the case in an impartial manner. Ms Emily LAU said that where a Member under complaint was reasonably expected to give explanations of his case but he did not, it was reasonable for the Committee,

when deliberating the case, to take this into account. Thus, it could only be fair to the Member under complaint to be forewarned of the possible consequence of remaining silent.

24. The Deputy Chairman enquired if a Member under complaint would breach any rules if he chose to remain silent. SALA1 responded that if a Member under complaint was only invited to appear before the Committee, he would not be breaching any rules by remaining silent. However, if he was summoned under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to appear before the Committee, it would be an offence for him to refuse to be examined or to answer any lawful and relevant questions put by the Committee. The offender would be liable to a fine of \$10,000 and imprisonment for 12 months, but the consent of the Secretary for Justice was required for initiating prosecution. Nevertheless, this was a separate issue and the Committee could carry on its own investigation and draw its conclusion on the case.

25. Mr Alan LEONG said that according to the Procedure, during the preliminary consideration stage, a Member under complaint would be invited, but not summoned under the Legislative Council (Powers and Privileges) Ordinance, to appear before the Committee. Hence, if a Member under complaint remained silent, it would be up to the Committee to decide whether or not to proceed to the investigation stage. Mr Albert CHENG said that at the investigation stage, a person summoned to appear before the Committee would be obliged to answer its questions.

26. Mr Alan LEONG said that as it had been provided in paragraph 15 of the Procedure that a complaint would be regarded as substantiated only if the Committee was satisfied that there was sufficient evidence for that, it would suffice to set out in the Preliminary Consideration section of the Procedure that the Committee might proceed to investigation if a Member under complaint remained silent. Members agreed.

the clerk

III. Date of next meetings

27. Ms Emily LAU said that she hoped that the mechanism for the Committee to deal with complaints relating to OER claims be put in place before the current LegCo session drew to a close. In response to Ms Emily LAU's enquiry about the timetable, the clerk said that if members agreed that the resolution to amend the RoP was to be moved at the Council meeting to be held on 5 July 2006, the notice for it would have to be given by 19 June 2006, and the House Committee had to be informed of the whole set of proposals, including the revised Procedure, on 16 June 2006, at the latest.

28. Members agreed that the next two meetings should be held on 23 May 2006 at 8:45 a.m. and 29 May 2006 at 12:45 p.m..

29. The meeting ended at 4:25 p.m..

Council Business Division 3
Legislative Council Secretariat
9 May 2006