

立法會
Legislative Council

LC Paper No. CMI/57/05-06

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

Committee on Members' Interests

**Minutes of the tenth meeting
held on Monday, 29 May 2006 at 12:45 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG
- Members absent
with apologies** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon LI Kwok-ying, MH
- Clerk in attendance** : Mrs Betty LEUNG
Chief Council Secretary (3)1
- Staff in attendance** : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1
- Mr Arthur LEUNG
Senior Council Secretary (3)1
-

**I. Setting up of a Mechanism for Handling Complaints and Allegations
Concerning Members' Operating Expenses Reimbursement Claims**
(LC Paper No. LS78/05-06)

The Deputy Chairman invited Senior Assistant Legal Adviser 1 (SALA1) to brief members on LC Paper No. LS78/05-06. SALA1 said that at the meeting held on 4 April 2006, the Committee on Members' Interests (the Committee) considered the proposed amendments to the Rules of Procedure (RoP), which were set out in LC Paper No. LS53/05-06 and summarized below:

- (a) a new subrule (1)(ca) was proposed to be added to Rule 73 to provide for the additional duty of the Committee “to consider any complaint made in relation to the conduct of Members in respect of their claims for reimbursement of operating expenses or applications for advance of operating funds and, if it thinks fit after consideration, investigate such complaint”;
- (b) a new subrule (1A) was proposed to be added to Rule 73 to provide that “in considering or investigating a complaint referred to in subrule (1)(ca), the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council”;
- (c) a new Rule 83AA was proposed to set out the specific conduct expected of a Member in making claims for reimbursement of operating expenses (OER claims) i.e. he should “ensure that any information provided or any declaration or certification made is true, accurate and complete; and act according to any undertaking that he has given”; and
- (d) an amendment was proposed to Rule 85 (Sanctions relating to Interests) to provide that sanctions might be imposed on a Member who had failed to comply with the proposed Rule 83AA.

SALA1 said that after the last meeting held on 23 May 2006, a member had expressed concern that when the proposed subrule (1)(ca) of Rule 73 was read alone, the specific conduct expected of a Member was not apparent. To address this concern, the member had proposed that the subrule be amended by including a direct reference to Rule 83AA, and the revised subrule, as set out in LC Paper No. LS78/05-06, would read:

“(ca) to consider any complaint made in relation to the conduct of Members referred to in Rule 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) and, if it thinks fit after consideration, investigate such complaint.”

2. Ms Emily LAU said that the revised subrule had clearly set out which of the complaints made in relation to OER claims might be considered and investigated by the Committee. She hoped that the views of all Legislative Council (LegCo) Members would be sought as scheduled at the Committee’s meeting on 2 June 2006. Mr Alan LEONG said that he considered that the

revised subrule had addressed the concern of some Members that the scope of complaints that the Committee might consider and investigate was too wide.

Proposed Rule 83AA of RoP

3. Mr Alan LEONG pointed out that as many details were involved in making OER claims, there would always be chances for a Member to make “honest mistakes”. He raised for the Committee’s discussion whether there were merits in explicitly setting out in the RoP that the Committee should take this into consideration when considering whether or not to recommend sanction, and what sanction to recommend to be imposed on the Member. Mr Albert CHENG and Mr Abraham SHEK favoured this approach as it would save the Committee’s time in debating the propriety of such considerations when dealing with a specific complaint.

4. Ms Emily LAU said that she considered that the Committee had the discretion of not recommending any sanction to be imposed on a Member where the Committee was satisfied that he had only made a honest mistake in OER claims. She enquired if Rule 83AA required the Committee to find out, in addition to the facts of the complaint, whether the Member under complaint consciously contravened the relevant rule when he made the OER claims. SALA1 said that in considering a complaint, the Committee should take into account all the relevant facts. What was required of a Member would be to take reasonable steps to ensure that the information he provided was true, accurate and complete. If the Member had done so but had been misled or deceived into making wrongful OER claims, he should not be considered as having breached the rule. After finding a complaint substantiated, the Committee would have to form a view on whether the Member had deliberately breached the rule when it considered the sanction to recommend.

5. The Deputy Chairman said that the proposed Rule 83AA might be too demanding on Members as it obliged them to “ensure” the information etc he provided was true, accurate and complete. In practice, it was difficult for a LegCo Member to verify that each of the bills he submitted for making OER claims was true and correct. He also disagreed that the Chinese translation of the word “complete” should be “詳盡”. Mr Albert CHENG concurred and considered that “完備” or “完整” might be more precise than “詳盡”, as neither carried the meaning of “full details”. He also suggested that the Committee consider replacing the word “確保” with “保證”. SALA1 said that as he had pointed out at a previous meeting, the Chinese translation of the word “complete” was “詳盡” in various existing ordinances. Also, the meaning of the terms “true, accurate and complete” should be construed together. Ms Emily LAU stressed that Members had the obligation to ensure the information they provided was true, accurate and complete.

6. As no consensus was reached, the Deputy Chairman proposed, and members agreed, that members should give the proposed Rule 83AA more thought and, if deemed appropriate, to follow up in the next meeting.

Paragraph 2 of the Procedure

7. Mr Abraham SHEK said that as he had pointed out at the last meeting, the Chairman might decide, according to paragraph 2 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), to hold a meeting even if the complaint concerned a Member's act(s) or omission(s) which had allegedly taken place seven or more years ago. He considered that it should be clearly stated in the Procedure that the Committee would not handle such complaints.

8. Mr Albert CHENG said that he shared Mr Abraham SHEK's views. Mr Alan LEONG said that various ordinances had provisions on the period of time beyond which legal actions might not be instituted, although the court might grant leave for that under certain circumstances. He agreed that the Committee should not handle such complaints, and suggested amending the Procedure to this effect. Other members agreed with Mr Alan LEONG's suggestion.

III. Date of next meeting

9. Members agreed that the next meeting should be held on 2 June 2006 immediately after the House Committee meeting as previously scheduled, and that all Members would be invited to attend the meeting to express their views on the Committee's proposals to amend the RoP and the Procedure.

10. The meeting ended at 1:20 p.m..