

立法會
Legislative Council

LC Paper No. CMI/58/05-06

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Committee on Members' Interests

**Minutes of the eleventh meeting
held on Friday, 2 June 2006 at 2:50 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (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
- Member absent with
apologies** : Hon SIN Chung-kai, JP (Deputy Chairman)
- Members in
attendance** : Hon Margaret NG
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS
Hon TAM Heung-man
- Clerk in attendance** : Mrs Betty LEUNG
Chief Council Secretary (3)1
- Staff in attendance** : Mr Ricky FUNG
Secretary General
- Mr Ray CHAN
Assistant Secretary General 3
- Mr LEE Yu-sung
Senior Assistant Legal Adviser 1
- Mr Arthur LEUNG
Senior Council Secretary (3)1
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I. Meeting with LegCo Members, and members' discussion, on the setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims
(LC Paper No. LS52/05-06)

The Chairman welcomed the Legislative Council (LegCo) Members present at the meeting and invited them to express their views on the proposals of the Committee on Members' Interests (the Committee) concerning the mechanism to be set up for the Committee to handle complaints about Members' claims for reimbursement of operating expenses (OER claims).

Scope of complaints to be handled by the Committee

2. Hon Margaret NG said some Members had expressed concern that, upon the Committee taking up the duty to handle complaints about Members' OER claims, it might send a message to the public that any complaint relating to OER claims could be lodged with the Committee. She said that the concern had been allayed with the Committee's latest revision to its proposed new Rule 73(1)(ca) of the Rules of Procedure (RoP), as it had a direct reference to the proposed Rule 83AA, which set out the conduct expected of a Member in making OER claims.

The consideration of honest mistakes

3. Hon Margaret NG said that Members normally delegated to their assistants the work of making OER claims, which involved many details. Hence, there was always the possibility that a Member would make "honest mistakes", and would be caught by the proposed Rule 83AA of RoP, which required Members to "ensure" that any information provided was true, accurate and complete. She invited the Committee to consider whether it was desirable to have an explicit provision in RoP that where there was an honest mistake on the part of the Member under complaint, the Committee should take this into account when deliberating the sanction to recommend.

4. Mr Albert CHENG said that at the last meeting, Mr Alan LEONG had raised the same issue and the Committee had decided to defer a decision until this meeting. Mr Alan LEONG said that he had proposed at the last meeting that a provision be added to Rule 85 of RoP, which dealt with sanctions, so that when the Committee had found a case substantiated, the fact that a Member had made an honest mistake would be a relevant factor and the Committee should take this into account when it deliberated what sanction to recommend.

5. Ms Emily LAU said that prior to this meeting, she had exchanged views with Members of the pan-democracy camp, who generally supported having a specific provision for considering honest mistakes. In this connection, Senior Assistant Legal Adviser 1 (SALA1) said that in the course of investigation, the Committee would determine whether there had been an honest mistake on the part of the Member under complaint after receiving and considering all relevant facts, including the explanation given by the Member.

6. Mr Abraham SHEK said he supported making such a provision.

7. The Chairman said she anticipated that the Committee would always have due regard to the interest of the Member under complaint. The Committee would take into account all relevant factors when it deliberated the sanction to recommend for a substantiated case, and honest mistake would be one of them. As it would be impossible to list exhaustively all the considerations, it might be undesirable to make specific provision for only one of them.

8. Hon Margaret NG said that the proposed Rule 83AA would impose a strict and clear duty on a Member to “ensure” the information he provided in making OER claims was true, accurate and complete. If the consideration of honest mistakes was explicitly provided in RoP, there would less likely be accusations of favouritism towards the Member under complaint on the part of the Committee should it recommend that no sanction be made. Mr Albert CHENG said that the Committee had been so criticized when it dealt with a complaint a year ago about the failure of a Member to register his interests. Also, it was important to set up a sound system, despite the fact that he had full confidence in the integrity of the current members of the Committee.

9. The Chairman invited members to consider whether, instead of making provisions for “honest mistakes” in the rule on sanction, Rule 83AA could be rewritten to the effect that a Member who had taken reasonable steps but still made honest mistakes would not be caught by it. Hon Margaret NG said that words such as “reasonably” might be considered by members of the public as subjective. Mr Abraham SHEK shared Hon Margaret NG’s view.

Where the provision on consideration of honest mistakes should be set out

10. SALA1 suggested that instead of Rule 85 of RoP, the Committee might also consider setting out the provision in the proposed new Rule 73(1A), which stated that the Committee should have regard to the provisions in “A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council”. Secretary General (SG) said that an alternative way was to set out the provision in the existing Rule 73(1)(e), which stated that the Committee might “report to the Council and make recommendations, including a recommendation

as to a sanction under Rule 85 (Sanctions relating to Interests)”. Hon Margaret NG was of the view that the provision should be set out in Rule 85, which dealt with sanctions, as it might be easier for members of the public to comprehend.

11. Assistant Secretary General 3 said that the Committee, empowered by the existing Rule 73, had been dealing with complaints relating to registration or declaration of interests. The Committee had come across cases of failure to register or declare interests which it considered as due to oversight only. He invited members to consider if it was more appropriate to provide the consideration of honest mistakes in 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).

12. SALA1 pointed out that the Committee might note that the existing Rule 73(1)(e) and Rule 85 applied to both complaints relating to OER claims and those relating to the registration or declaration of interests. Mr Alan LEONG said that the consideration of honest mistakes should apply to both types of complaints, and he proposed that the provision be set out in paragraph 19 of the Procedure. Other members agreed. The Chairman instructed that the SALA1, clerk. Secretariat to revise the paragraph and circulate it to members for approval.

Paragraphs 1 and 2 of the Procedure

13. The Chairman said that at the last meeting, the Committee had decided that it would not handle complaints about a Member’s act(s) or omission(s) which had allegedly taken place seven or more years ago, and that this should be clearly stated in the Procedure. She sought members’ views on the amendments proposed to paragraphs 1 and 2 of the Procedure by the Secretariat pursuant to that decision. Members endorsed the proposed amendments.

Composition of the Committee

14. Hon LEE Wing-tat pointed out that it was only a gentlemen’s agreement among Members that the composition of the Committee would be broadly representative of the political groupings of Members. He enquired if this arrangement should be codified in RoP. Mr Abraham SHEK said that the present arrangement was in line with the convention of the legislature, and he considered it satisfactory. SG said that the issue raised by Hon LEE Wing-tat had wide implications, since various committees, including The Legislative Council Commission and the Public Accounts Committee, had similar arrangements. Mr LI Kwok-ying said that members of the Committee had in

the past been cautious not to allow party politics to interfere with its handling of complaints. He said that the representation of political groupings in the Committee should not be over-emphasized.

15. The Chairman said that the issue of the Committee's composition was outside the jurisdiction of the Committee. Mr Albert CHENG concurred. Ms Emily LAU said that the House Committee might be a more appropriate forum for discussing the issue, and it would be up to the Democratic Party to submit a discussion paper to the House Committee. She added that when the Committee received a delegation from its counterpart in the Irish Parliament in March this year, she was advised that in their case, membership of the committee was not a contentious issue.

16. Members of the Committee endorsed the following timetable:

- (a) the Committee to submit its report to the House Committee at its meeting on 16 June 2006;
- (b) the Chairman to give notice by 19 June 2006 of moving a motion at the LegCo meeting on 5 July 2006 to amend RoP; and
- (c) the clerk to issue the revised Procedure to Members for reference on 6 July 2006.

II. Confirmation of the minutes of the ninth meeting held on 23 May 2006
(LC Paper No. CMI/49/05-06)

17. The minutes of the ninth meeting of the Committee held on 23 May 2006 were confirmed.

18. The meeting ended at 3:30 p.m..