

**立法會**  
**Legislative Council**

LC Paper No. CMI/25/12-13

Ref: CB(3)/C/2(12-16)

**Committee on Members' Interests**

**Minutes of the first open meeting  
held on Monday, 26 November 2012, at 4:30 pm  
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)  
Hon Emily LAU Wai-hing, JP (Deputy Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon Frankie YICK Chi-ming  
Hon Gary FAN Kwok-wai  
Hon Dennis KWOK
- Member absent** : Hon CHAN Yuen-han, SBS, JP
- Clerk in attendance** : Mr Arthur LEUNG  
Chief Council Secretary (3)3
- Staff in attendance** : Mr Kenneth CHEN  
Secretary General
- Mr Jimmy MA, JP  
Legal Adviser
- Mrs Justina LAM  
Deputy Secretary General
- Miss Odelia LEUNG  
Assistant Secretary General 3
- Mr KAU Kin-wah  
Senior Assistant Legal Adviser 3
- Miss Wylie HO  
Senior Council Secretary (3)6
- Mr Ambrose LEUNG  
Research Officer (3)

## Action

### **I. Issuance of advisory guidelines on matters of ethics in relation to the conduct of Members of the Legislative Council** (LC Paper No. CMI/4/12-13)

The Chairman said that under Rule 73(1)(d) of the Rules of Procedure ("RoP"), one of the functions of the Committee on Members' Interests ("CMI") was to "consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters". The first set of "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" ("Advisory Guidelines") was issued by CMI to all Members in June 1996. Since then, the Advisory Guidelines was issued by CMI to all Members at the beginning of each Legislative Council ("LegCo") term after adoption by CMI at its first meeting of the term.

2. At the invitation of the Chairman, the Clerk briefed members on the background to the issuance of the Advisory Guidelines by CMI of the previous terms, as set out in LC Paper No. CMI/4/12-13. He said that the Advisory Guidelines was advisory in nature. As far as Members' conduct in their capacity as such was concerned, it was not within CMI's terms of reference to investigate into complaints about Members' misconduct. In 1995 and 1996, LegCo twice debated the proposed resolutions to empower CMI to consider and investigate complaints about Members' misconduct, but both resolutions were negated.

3. The Clerk further said that CMI of the Fourth LegCo had considered the feasibility of appointing an independent person as a commissioner to handle complaints against Members. The advice of Sir Malcolm Jack, a retired Clerk of the House of Commons of the Parliament of the United Kingdom, had been sought regarding this matter. Sir Malcolm was of the view that it would be very difficult for the commissioner to carry out his work in the absence of a code of conduct for Members.

4. Mr Jeffrey LAM said that the standard of conduct expected of a Member by fellow Members and members of the public might have changed over the years since the Advisory Guidelines was first made in 1996. Referring to the first paragraph of the Advisory Guidelines which provided that "[a] Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council", Mr LAM said that it was a subjective judgement on whether the specific conduct of a Member had brought discredit upon LegCo. He was concerned how the Advisory Guidelines, which was couched in general terms, could be relied on in determining the propriety of the specific conduct of individual Members.

5. At the invitation of the Chairman, Secretary General ("SG") said that while amendments had been made from time to time to the Advisory Guidelines since it was first made in 1996, it remained general and advisory in nature. CMI of the former LegCo had deliberated proposals to formulate a code of conduct for Members to follow, but the proposals had not been adopted.

6. At the invitation of the Chairman, Legal Adviser ("LA") said that the current political system of Hong Kong was quite different from that when the Advisory Guidelines was first made in 1996. All along, the terms of reference of CMI concerned mainly registration and declaration of interests. Upon the coming into operation of the Basic Law in 1997, a mechanism had been put in place in the RoP for the disqualification of a Member from the office under Article 79(7) of the Basic Law, which provided that the President must declare that a Member was no longer qualified for the office when he or she was censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present. LA pointed out that the Advisory Guidelines had set out the general principles of conduct rather than guidelines on specific conduct. Such a drafting approach was understandable, bearing in mind that it was not easy to lay down comprehensive guidelines on the conduct expected of Members. In the case of the House of Commons of the United Kingdom ("UK"), the Code of Conduct for Members of Parliament comprised general principles of conduct and specific rules against which the conduct of Members of Parliament ("MPs") could be judged. More comprehensive rules and guidance supplementing the Code were provided separately in the Guide to the Rules relating to the Conduct of Members and resolutions of the House relating to the conduct of MPs. He said that if members wished to deliberate the issue of monitoring of the conduct of Members at future meetings, they could revisit the Advisory Guidelines in that context.

7. The Chairman said that while he agreed that different people might have different interpretations of the guidelines in the Advisory Guidelines, it nonetheless provided a broad framework on the standard of conduct for Members' reference. Mr Jeffrey LAM shared the view and said that the interpretation of the guidelines had to be made in the factual context of a case.

8. Ms Emily LAU considered that while paragraphs 1 to 3 of the Advisory Guidelines were general principles which could be subject to different interpretations, paragraphs 4 to 7 set out the specific conduct relating to the avoidance of conflict of interests and the provision of correct and true personal information to the Council. The issuance of the Advisory Guidelines would serve as a reminder to all Members of the standard of

conduct expected of them and the serious consequences they could face if they failed to adhere to the Advisory Guidelines.

9. Ms Emily LAU further said that CMI should follow up at future meetings the proposal of CMI of the Fourth LegCo on the appointment of an independent person as a commissioner to handle complaints against Members, and whether a code of conduct for Members should be formulated. She also drew members' attention to the observation of an investigation committee established under Rule 49B(2A) of the RoP in the Fourth LegCo that the current system should be reviewed in order to ensure that there were appropriate mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity.

Secretariat

10. Members agreed that the Advisory Guidelines be issued to all Members for reference. The Chairman opined that the Advisory Guidelines, once adopted by CMI, should remain in force until it was amended by CMI as and when considered necessary. As such, in future, the Advisory Guidelines should be issued to all Members when they took office and there was no need to seek its adoption or endorsement by CMI at the beginning of each new term. Members agreed to the arrangement.

**II. Adoption of a procedure for handling complaints by the Committee on Members' Interests in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses**  
(LC Paper No. CMI/5/12-13)

11. The Chairman said that under Rule 73(1)(c) and (ca) of the RoP, two of the functions of CMI were to consider any complaint made in relation to the registration and declaration of Members' interests, or Members' claims for reimbursement of operating expenses ("OER claims") and applications for advance of operating funds ("AOF applications"), and, if it thought fit after consideration, investigate such complaint. A detailed set of complaint handling procedure ("the Procedure") was made by CMI of the First LegCo and was issued to all Members. Since then, the Procedure was issued by CMI to all Members at the beginning of each LegCo term after adoption by CMI at its first meeting of the term.

12. At the invitation of the Chairman, the Clerk said that the Procedure was made by CMI under Rule 73(7) of the RoP and the approval of the Procedure by the House Committee or the Council was not required. It was the established practice of CMI of the previous terms to issue the Procedure to all Members and upload it onto the LegCo web site, so that members of the public would know the procedure that CMI would follow in

handling complaints against Members within its remit. He drew members' attention to paragraphs 4 to 8 of the paper, which set out the areas of improvement that could be made to the Procedure, as identified by CMI of the Fourth LegCo following a review.

13. Noting the areas of improvement to the Procedure as identified by CMI of the Fourth LegCo, Ms Emily LAU enquired whether CMI should first deliberate on those points before issuance of the Procedure to Members. At the invitation of the Chairman, the Clerk said that the Procedure had served its purpose well so far. However, having regard to the experience in handling five complaints, CMI of the Fourth LegCo had identified certain areas of improvements that could be made to the Procedure, which were mainly logistical arrangements and did not concern important principles of fairness and confidentiality. As such, members might wish to issue the existing Procedure to avoid any vacuum period, in order that complaints received by CMI could be handled in accordance with the Procedure.

14. Ms Emily LAU said that while she agreed that the Procedure be adopted and issued to all Members, CMI should follow up on the areas of improvement as identified by CMI of the Fourth LegCo, such as the time limits specified in the Procedure regarding the holding of meetings, and the purpose of the first meeting to consider a complaint.

15. The Chairman concluded that the Procedure should be issued to all Members and uploaded onto the LegCo web site, and amendments to the Procedure proposed by CMI of the Fourth LegCo could be considered at future meetings. Members agreed.

16. Members further agreed that in future, similar to the Advisory Guidelines, the Procedure should be issued to all Members when they took office and there was no need to seek its adoption or endorsement by CMI at the beginning of each new term.

#### Appointing an independent person as a commissioner to handle complaints

17. Following up on the discussion by CMI of the Fourth LegCo on the proposal for the appointment of an independent person as a commissioner to handle complaints against Members, Ms Emily LAU said that as it would take a long time for the LegCo to agree on a set of code of conduct for Members, and, as such, the appointment of a commissioner to handle all complaints about the conduct of Members would unlikely be materialized in the near future. Yet, she strongly supported the proposal of CMI of the Fourth LegCo to appoint an independent person as a commissioner whose functions were restricted to investigation of complaints within the current remit of CMI. In her view, the investigation of complaints by a

commissioner could address the public concern about Members conducting investigation into complaints about the conduct of their fellow legislators. Also, it would help to reduce the heavy workload of CMI in handling complaints, which CMI of the Fourth LegCo had experienced. Ms LAU considered that a commissioner could be appointed on a case-by-case basis to investigate complaints within the current remit of CMI, who should report his or her findings to CMI.

18. Ms LAU also said that to minimize complaints about OER claims of Members, she urged Members to be vigilant in submitting OER claims and the Secretariat to be stringent in vetting Members' claims. Some Members had reflected to her their appreciation of the Secretariat's stringent processing of their OER claims as it had helped them avoid making improper claims inadvertently.

19. At the invitation of the Chairman, SG said that CMI of the Fourth LegCo had explored the option of appointing an independent person as a commissioner to assist CMI in investigating complaints relating to registration and declaration of Members' interests, as well as OER claims and AOF applications. CMI had noted the adoption of different arrangements by overseas legislatures. CMI of the Fourth LegCo recommended that the proposal of appointing a commissioner be followed up by CMI of the current term. He said that members might wish to discuss the matter at future meetings.

20. The Chairman said that Members were aware of the need to conduct themselves properly as they were under the close scrutiny of the media and the public. Besides, CMI had already put in place a comprehensive mechanism to deal with complaints against Members which fell within its remit. The Secretariat had also provided detailed guidelines to Members in making OER claims and deployed plenty of resources to provide assistance to various committees such as CMI, investigation committee etc., in conducting investigations where necessary. In his view, the proposal of appointing a commissioner should be considered carefully, having regard to resource implications, the need for a code of conduct as well as the division of work between the commissioner, CMI and the Secretariat etc.

21. In response, Ms Emily LAU said that it was premature to jump to conclusion on the proposal, but CMI should commence deliberation on it. She said that the commissioner should be appointed by CMI, and as far as she knew, the commissioners appointed by overseas legislatures for handling complaints against members of parliaments were independent persons and were not staff members of the secretariats designated for undertaking the task.

22. The Chairman said that a commissioner, even if appointed, could not carry out an investigation by himself and herself without support, and it might entail the need to recruit a team of staff to assist the commissioner in carrying out investigations.

23. Mr Dennis KWOK said that resource implications aside, the impartiality and neutrality of the Secretariat were very important. As staff members of the Secretariat had daily contacts with Members concerning LegCo business, it would not be proper for them to handle the sensitive matter of investigating Members. He opined that reference could be made to the experience of the UK Parliament, which had established an independent body known as the Office of the Parliamentary Commissioner for Standards to handle complaints against MPs.

24. LA clarified that the role of the Secretariat was to assist Members in carrying out their duties. He added that while SG, as the controlling officer of the funds appropriated for the LegCo Commission, had, among others, the duty to verify Members' OER claims and AOF applications, the Secretariat had not and would not carry out any investigation into complaints against Members on its own.

25. Senior Assistant Legal Adviser 3 (SALA3) said that consideration might be given to the appointment, on a trial basis, of an investigator to assist CMI in its investigations of complaints about OER claims and AOF applications. Professionals such as accountants might be suitable candidates for appointment as an investigator to carry out fact-finding tasks in such complaints, which should not be too onerous. Ms Emily LAU said that a list of suitable persons might be drawn up and they might be appointed per job on a need basis.

Secretariat

26. The Chairman concluded that CMI should further study the issue of the appointment of a commissioner to handle complaints against Members, with reference to the deliberations of CMI of the Fourth LegCo. Members agreed that the Secretariat should prepare a paper on the issue for discussion.

**III. Issuance of an information paper on the relevant provisions/ requirements for disclosure of pecuniary interest by Members and voting or withdrawal in case of direct pecuniary interest**  
(LC Paper No. CMI/6/12-13)

27. The Chairman said that Rule 83A of the RoP provided that in the Council or in any committee or subcommittee, a Member should not move any motion or amendment relating to a matter in which he had a pecuniary interest, whether direct or indirect, or speak on any such matter, except

where he disclosed the nature of that interest, and Rule 84 of RoP provided that Members should refrain from voting or withdraw in case of direct pecuniary interest.

28. At the invitation of the Chairman, the Clerk said that the Secretariat had issued circulars to Members during the Fourth LegCo in response to Members' enquiries on the relevant rules relating to conflict of interests before the moving of a motion at the Council meeting of 12 November 2008 to set up the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products and the Finance Committee's consideration of the funding proposal for the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link in December 2009. He highlighted the main points in the paper, and said that members might consider issuing the paper to all Members to assist them in understanding the requirements and compliance with the relevant rules.

29. At the invitation of the Chairman, LA said that there were some issues about disclosure of pecuniary interest which were deliberated by CMI in the Fourth LegCo but had not yet been resolved. For example, some Members had declared their interests at meetings of the Council or committees by saying that the companies with which they were associated might have interests in the matters being considered by the Council or committees. In his view, such declarations might not fully meet the requirements of Rule 83A, which required Members to disclose "the nature" of any relevant direct or indirect pecuniary interest as a condition precedent for the Members to move any motion, amendment or speak on a related matter. LA further said that members might wish to consider the issue of whether Members were required to disclose their relevant interests every time they spoke on the matter if the discussion on the same matter straddled across meetings of different dates.

30. Mr Jeffrey LAM said that there were various provisions relating to declaration and conflict of interests in the existing and the new Companies Ordinance, the latter being enacted in the last LegCo term. He considered that to maintain the credibility of LegCo, Members should not make its own rules arbitrarily but should make reference to the relevant statutory provisions such as those of the new Companies Ordinance.

31. At the invitation of the Chairman, SALA3 said that the new Companies Ordinance, which had yet to come into operation, dealt mainly with matters relating to the operation of companies. As the nature of a conflict of interests in the context of companies and LegCo was quite different, he did not see direct implications of the new ordinance on LegCo.

32. Mr Jeffrey LAM said that in the new Companies Ordinance, the



provisions on conflict of interests would apply only to those directly involved in the relevant matter and members of a company who were genuinely unaware of the existence of such interests would not be held liable. He considered that similar principles might need to be adopted when complaints against Members were considered by CMI.

33. LA said that the main purpose of disclosure of pecuniary interest was to ensure that other Members and the public were made aware, when a Member was participating in the proceedings of the Council or its committees, of any pecuniary interest which might reasonably be thought to be relevant to those proceedings. In handling a complaint about non-disclosure of pecuniary interest by Members, CMI of the Fourth LegCo had arrived at certain basic principles applicable to determining whether a Member had a pecuniary interest in a matter required to be disclosed by virtue of his being a non-executive director of a company whose subsidiary had bid for contracts relating to the matter. Yet, divergent views had been expressed on such principles in the motion debate on these principles as set out in one of the chapters of CMI's report on the investigation of the complaint. Members might need to revisit such principles should a similar complaint be received by CMI.

34. The Chairman enquired if, upon issuance of the paper to all Members, it would be clear to Members whether they had to disclose pecuniary interest which they had no knowledge of. LA said that there was no straightforward answer to that, and each case had to be considered against its own circumstances. It had been made clear in the paper that it was for individual Members to judge whether they had a direct or indirect pecuniary interest in the matter under consideration at the relevant meeting of the Council and committees.

35. Ms Emily LAU said that she was open to further discussion at future meetings on the complicated issues regarding such principles on how directorships should be regarded for the purpose of complying with Rule 83A of the RoP, but in the meantime the information paper on the relevant rules should be issued to Members. She added that Members had the responsibility to ascertain whether they had any pecuniary interest to disclose before they spoke on a certain topic in the Council or at committee meetings. She also considered that Members should be required to disclose their relevant interest on a matter at each of the meetings at which the matter was discussed.

36. Mr Frankie YICK agreed that the paper should be issued to Members. He said that he was a non-executive director of a corporation which had a diversified portfolio of businesses. He was concerned that he was required to disclose the same pecuniary interest repeatedly. He

considered that the disclosure requirement was cumbersome and should be simplified.

37. Mr Jeffrey LAM also agreed that the paper should be issued to Members. He said that when CMI considered a complaint of such nature, reference should be made to the relevant statutory provisions on conflict of interests and liability of directors and senior management of companies.

38. The Chairman concluded that the paper should be issued to all Members. Members agreed.

**IV. Items for discussion at the next meeting**  
(LC Paper CMI/7/12-13)

39. Members agreed that CMI should follow up on the issues in the list of issues suggested to be considered as set out in LC Paper CMI/7/12-13 and the order for discussion would be decided by the Chairman in consultation with the Secretariat.

40. The Chairman said that meetings of CMI would be held on a need basis, normally one every two months, and members would be consulted on the date of the next meeting.

**V. Any other business**

41. There being no other business, the meeting ended at 6.04 pm.

Council Business Division 3  
Legislative Council Secretariat  
23 January 2013