

立法會

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Committee on Members' Interests Paper for the meeting on 28 January 2013

Review of the procedure for handling complaints in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses

Purpose

This paper summarizes the deliberations by the Committee on Members' Interests ("CMI") of the Fourth Legislative Council ("LegCo") on the proposed changes to "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"), and invites members to consider the way forward.

Background

2. Under Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP"), CMI is empowered to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so, or any complaint made in relation to Members' claims for reimbursement of operating expenses ("OER") or applications for advance of operating funds; and, if it thinks fit after consideration, investigate such complaint.

3. To ensure fairness to a Member under complaint and the complainant as well as to guard against abuse or favoritism by a dominant party in the Council when CMI deals with complaints within its remit, a

detailed set of complaint handling procedure was made by CMI of the First LegCo¹ and issued to all Members. Since then, the Procedure was issued by CMI to all Members at the beginning of each legislative term. At the first meeting on 26 November 2012, CMI of the Fifth LegCo decided that the Procedure should be issued to all Members, a copy of which is in the **Appendix**.

Review of the Procedure by CMI of the Fourth LegCo

4. In the Fourth LegCo, CMI considered five complaint cases involving 12 Members. Having regard to the experience gained in handling these complaints, CMI of the Fourth LegCo conducted a review of the Procedure. The deliberations on the Procedure by CMI of the Fourth LegCo are set out below.

Proposed changes to the Procedure

Time limits

5. Paragraph 1 of the Procedure stipulates that the Clerk should, upon receipt of a complaint, ask the Chairman to decide within two working days whether a meeting on the matter should be held. Paragraphs 3 and 4 of the Procedure stipulate that the first meeting should be held within seven working days from the day on which the Chairman decides that a meeting should be held or from the date on which the Chairman's decision of not holding a meeting is overturned by a majority of members. Paragraph 4 also provides that members disagreeing with the Chairman's decision of not holding a meeting should reply to the Clerk within three working days. The above time limits were first adopted by CMI of the First LegCo and have not been changed since then. The main consideration for setting out in detail a time limit for deciding whether action should be taken on a complaint was to guard against abuse by a dominant party in the Council and to cater for the most antagonistic situation.

6. CMI of the Fourth LegCo considered that the time limit for the Chairman to decide whether a meeting should be held should be extended to three working days, as two working days had been found to be inadequate for the Clerk to reach the Chairman when he or she was not in Hong Kong and obtain a response from him or her. Also, as there had

¹ Paragraph 11, minutes of the third meeting of the Committee on Members' Interests of the First LegCo held on 15 December 1998.

been practical difficulties in scheduling a meeting with a quorum within seven working days after the Chairman had decided to hold a meeting, CMI considered that the Procedure should be amended to extend such a time limit to 10 working days.

Purpose of the first meeting

7. According to the Procedure, the first meeting to consider a complaint is normally held to decide whether the complaint should be pursued. In making this decision, members will review the content of the complaint and if the information is insufficient for CMI to decide whether to pursue the complaint, CMI may decide to gather additional information relevant to the complaint and the allegations in question. This task is usually done by the Clerk who acts upon the instruction of CMI.

8. CMI of the Fourth LegCo considered it necessary to stipulate in the Procedure that the purpose of the first meeting or the first series of meetings was for CMI to decide whether the complaint should be pursued by proceeding to the Preliminary Consideration Stage by taking into account the following:

- (a) information provided by the complainant;
- (b) the provisions of RoP relevant to the complaint; and
- (c) any other matters (including any additional information beyond that contained in the complaint) which the Committee considers relevant for making the decision.

Issues which should be further examined

Whether information other than that provided by the complainant should be considered at the first meeting

9. CMI of the Fourth LegCo noted the view that if CMI was to consider additional information other than that contained in the complaint at the first meeting, there might be the risk of CMI being alleged to be embarking on a fishing expedition. Members agreed that this issue should be examined further.

Whether the Member under complaint ought to be informed if CMI decides not to consider the complaint after the first meeting

10. CMI noted that the Procedure was silent on whether a Member under complaint should be informed if CMI decided at the first meeting not to consider the complaint. It had considered a proposal to state in the Procedure that when CMI decided at its first meeting that a complaint was not pursuable and no further action was to be taken, CMI should decide on a case-by-case basis on whether information on that complaint would be disclosed to the Member under complaint. Members agreed that this issue should be examined further.

Circumstances under which CMI ought to proceed to the Investigation Stage

11. Under Paragraph 11 of the Procedure, if the Member under complaint admits all the allegations made in a complaint at the Preliminary Consideration Stage and CMI is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, CMI shall report to LegCo and make a recommendation as to the sanction to be imposed on the Member under complaint. This stipulation was modeled on the practice in the United Kingdom House of Commons when the Procedure was first made by the First LegCo. In the light of the experience in handling a complaint case, some members of CMI of the Fourth LegCo found this procedure unclear as to whether CMI ought to proceed to the Investigation Stage if CMI was able to form the opinion that the complaint was substantiated at the Preliminary Consideration Stage, but the Member under complaint did not admit the allegations or agree to CMI's opinion.

12. Some members considered that CMI should proceed to the Investigation Stage only if there was dispute between CMI and the Member under complaint over the facts in the allegations, since the main purpose of conducting an investigation was fact-finding. CMI's decision on whether to proceed to the Investigation Stage should not be subject to the opinion of the Member under complaint, and the Procedure should allow CMI to make its own judgment on each case while being held accountable for its decision. Members agreed that the issue should be examined further.

13. As the proposal of appointing an independent person as a commissioner to handle complaints against Members was under consideration which would impact on the Procedure, CMI of the Fourth

LegCo agreed that the proposed changes to the Procedure be considered in the context of a revamp of the investigation of complaints regime and followed up by the Fifth LegCo.

Advice sought

14. Members are invited to note the deliberations on the Procedure by CMI of the Fourth LegCo in paragraphs 5 to 13 above, and advice on the way forward.

Council Business Division 3
Legislative Council Secretariat
23 January 2013

**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**

January 2009

**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**

Convening the first meeting

- (1) Upon receipt of a written complaint by the Committee on Members' Interests ("the Committee") from a Member or a member of the public (hereinafter referred to as "the complainant") about the registration or declaration of interests of a Member or a Member's claims for reimbursement of operating expenses (hereinafter referred to as "the Member under complaint"), the Clerk to the Committee ("the Clerk") shall forthwith contact and verify the identity of the complainant. The Clerk shall then distribute the complaint in the form of a confidential document to members of the Committee ("members") and he shall ask the Chairman of the Committee ("the Chairman") to decide within two working days whether a meeting on the matter should be held (in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, the Clerk shall seek instruction from the Deputy Chairman; the same principle shall apply in subsequent paragraphs). If a complaint (i) is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or (ii) is made against a former Member, or (iii) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of the complaint, the Chairman shall instruct the Clerk to circulate the complaint to other members in the form of a confidential document for information. However, the Committee will not consider the complaint.
- (2) In deciding whether a meeting should be held to consider the complaint received, the Chairman may consider not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration or declaration of a Member's interests, or a Member's claims for reimbursement of operating expenses;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) the complaint involves substantially repeated allegations which have already been dealt with by the Committee, except where fresh evidence has been produced; or
 - (d) other reasons he deems appropriate.
- (3) If the Chairman decides that the Committee should meet, he shall instruct the Clerk to arrange for the first meeting to be held within the next seven working days to consider the complaint.

- (4) If the Chairman decides not to hold such a meeting and conveys to the Clerk his decision as well his reasons for making such a decision, the Clerk shall inform other members of the Chairman's decision and his reasons. If any member indicates disagreement with the decision in writing, the Clerk shall, by way of a circular, ask the members to forward replies to him within three working days on whether a meeting should be held to consider the complaint. In the event that the Clerk receives replies in which the majority of members indicate their support for holding a meeting, he shall ask the Chairman to fix the date, the time and the venue for the meeting. The first meeting shall be held within the next seven working days.
- (5) If the Chairman makes a decision of not holding a meeting and the Clerk does not receive replies from a majority of members indicating disagreement with this decision after the expiry of the three-day deadline since the issue of the circular, the Committee will not take any further action on the complaint.

Preliminary consideration

- (6) The Committee may hold a meeting or a series of meetings to consider the complaint.
- (7) The purposes of such meetings are:
- (i) To ascertain the subject of the complaint and the provisions of the Rules of Procedure relevant to the allegations in question; and
 - (ii) To gather information relevant to the complaint and the allegations in question, such as the dates, amounts of money (if any), persons involved, etc. Such information should not include media reports, information provided by anonymous persons and speculations, inferences or judgements made by individuals.
- (8) In considering a complaint relating to a Member's claims for reimbursement of operating expenses, the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.
- (9) The Committee may invite the complainant to attend a meeting(s) to provide information. The Committee may also invite the Member under complaint to attend a meeting(s) to give explanations, and provide information. At the time of making the invitation, the Committee shall inform the Member under complaint that if he refuses to attend such meeting(s) or refuses to answer questions of the Committee at such meetings, the Committee may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before the Committee, and to give evidence or to produce documents, and may cause him to be examined on oath.

- (10) In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.
- (11) If the Member under complaint admits all the allegations at this stage, and the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, the Committee shall report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint.
- (12) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (13) If the Committee decides to conduct an investigation into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint and to provide the Member under complaint with information received in relation to the complaint.
- (14) In the course of conducting an enquiry, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. At such a hearing, the Committee may cause witnesses to be examined upon oath. The Committee may ask the complainant, the Member under complaint and other persons to confirm upon oath the information and statements they have provided at previous meetings.
- (15) The Member under complaint shall have the right to give explanations, make clarification and provide information on the subject of the complaints and the related matters. In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.

Suspension of work on the complaint

- (16) If, during the preliminary consideration or the investigation stages, the Committee has come to the knowledge that the complaint or related matters is/are being investigated by a law enforcement agency, or is/are relating to a case pending in a court of law, the Committee may suspend its investigation until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

The Committee's decision as to whether a complaint is substantiated

- (17) If the Committee decides that there is sufficient evidence to substantiate a complaint, it shall inform the complainant and the Member under complaint of its decision.
- (18) Upon receipt of the Committee's notification of its decision that the complaint is substantiated, the Member under complaint may make a request in writing to the Committee for a review of the decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable at hearings held earlier. Upon receipt of the written request for a review of the Committee's decision from the Member under complaint, the Chairman shall instruct the Clerk to arrange for a meeting to be held for such purpose within the next seven working days to hear the explanation made by the Member under complaint and to review its earlier decision.
- (19) If the Committee is of the opinion that the complaint is substantiated, or it is still of the opinion after the review that the complaint is substantiated, the Committee shall present a report to the Council on the complaint, in which the evidence and its opinion should be set out. The Committee may also make a recommendation to the Council as to a sanction to be imposed on the Member under complaint under Rule 85 of the Rules of Procedure. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part.
- (20) If the Committee is of the opinion that the complaint is not substantiated, it shall convey the decision to the complainant and the Member under complaint. The Committee may decide whether it should submit a report on this to the Council. If the Committee decides not to submit a report on this to the Council, members or any other person must not disclose any information regarding the complaint, except the evidence taken before the Committee and documents presented to it during meetings of the Committee held in public.

Confidentiality Requirement

- (21) All members and other persons attending meetings of the Committee held in camera (except the Member under complaint) shall be required to sign a confidentiality undertaking that they will not publish evidence taken before the Committee, documents produced to it, or its deliberations and decisions before the Committee has presented its report to the Council. Where the Committee finds that a member or other person has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the member or that other person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the Rules of Procedure, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.
- (22) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 17 or 20, the latter shall be required to sign a confidential undertaking not to publish any document marked as confidential by the Committee before it has presented its report to the Council. Where the Committee finds that the Member under complaint has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.
- (23) Meetings of the Committee, including those at which hearings are conducted, shall be held in camera. However, hearings shall be conducted at meetings held in public if the Member under complaint makes such a request.
- (24) The transcript of evidence taken at such hearings shall be published in full as far as possible and form part of the report of the Committee.

Participation of members in the deliberations of the Committee

- (25) No member of the Committee shall participate as a member of the Committee in the handling of a complaint or in the meetings of the Committee to deliberate on or inquire into a complaint where the complaint was made by or against him.