

# 立法會

## *Legislative Council*

LC Paper No. CMI/27/12-13

Ref : CB3/C/2(12-16)

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

### **Proposal of appointing a commissioner to handle complaints against Members**

#### **Purpose**

This paper summarizes the deliberations of the Committee on Members' Interests ("CMI") of the Fourth Legislative Council ("LegCo") on a proposal of appointing an independent person as a commissioner to investigate complaints against Members as well as the outcome of consultation on the proposal with Members of the Fourth LegCo, and invites members to consider the way forward.

#### **Background**

2. In view of the inadequacies of the mechanisms in LegCo for dealing with complaints against Members in their capacity as such and the need to address the public concern about Members conducting investigation into complaints made against their fellow legislators, CMI of the Fourth LegCo conducted a study of how selected overseas legislatures deal with complaints about the conduct of their Members.

3. Having studied the mechanisms of a number of overseas legislatures, CMI found the mechanism for investigating complaints against Members of Parliament in the House of Commons of the United Kingdom ("UK"), where the investigative work is entrusted to a commissioner, most relevant. CMI of the Fourth LegCo had worked out a proposal of appointing an independent person as a commissioner to handle complaints against Members and consulted all Members on the

proposal towards the end of the last term. CMI agreed that its proposal and the outcome of the consultation should be reported to CMI of the Fifth LegCo for consideration.

### **Inadequacies of existing mechanisms for dealing with complaints against Members in their capacity as such**

4. At present, depending on the nature of a complaint against a Member, and the Member's conduct or behaviour under complaint, the following committees may have the function to deal with it under existing mechanisms provided in the Rules of Procedure ("RoP"). They are CMI established under Rule 73 of RoP, an investigation committee ("IC") established under Rule 49B(2A) of RoP and a select committee ("SC") established under Rule 78(1) of RoP. CMI of the Fourth LegCo considered such mechanisms inadequate in that:

- (a) CMI only deals with complaints made against Members relating to registration of Members' interests, disclosure of pecuniary interests, operating expenses reimbursement ("OER") claims and applications for advance of operating funds;
- (b) IC is only tasked to consider complaints made against Members for breach of oath or misbehaviours which is so serious as to warrant disqualification from office; and
- (c) while a SC may be appointed by the Council to consider complaints about Members' conduct which fall outside the respective remits of CMI and IC, the fact that this has never been done may suggest that it is not an appropriate mechanism to deal with such complaints for reasons such as unnecessarily exposing the identity of the Member being named, the absence of power provided under RoP for SC to recommend sanctions and the lack of a standing practice and procedure for handling such complaints.

5. CMI of the Fourth LegCo also considered that irrespective of whether the complaints against Members are investigated by CMI, IC or SC, all of these committees could be perceived by the public as Members conducting investigation into the conduct of their fellow legislators. This might affect the credibility not only of these committees, but also that of LegCo.

## **Study on the mechanisms for dealing with complaints against Members in selected overseas legislatures**

6. CMI of the Fourth LegCo had conducted a study on how the UK House of Commons, the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia, the Legislative Yuan of Taiwan and the National Assembly of the Republic of Korea deal with complaints against their Members<sup>1</sup>. CMI noted that all of the overseas legislatures studied have mechanisms in one form or another to handle Members' misconduct. While the responsibility for looking into cases of misconduct of Members in all of these legislatures rests with a committee, both the UK House of Commons and the Canadian House of Commons appoint independent commissioners to deal with complaints against their Members for breaching a code of conduct and other misconduct<sup>2</sup>.

7. CMI noted that the code of conduct for Members of the UK Parliament applies to Members in all aspects of their public life. It does not seek to regulate what Members do in their purely private and personal lives. The code and the guides to the code to assist Members in discharging their duties were approved by the House and have been revised from time to time. In Canada, the code of conduct for Members of its Parliament as well as for public officials is only concerned with conflict of interests and not with all types of ethical behaviour. In respect of the Australian Parliament, the Legislative Yuan of Taiwan and the South Korean Parliament, the conduct of their Members are governed either by constitution, legislation and/or resolutions of the parliament.

### **Proposal deliberated by CMI of the Fourth LegCo**

8. In studying the feasibility of appointing an independent person as a commissioner to handle complaints against Members, CMI of the Fourth LegCo found the UK mechanism of appointing a part-time commissioner with a small team most relevant. Under the UK mechanism, the commissioner is responsible for receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct for Members of the Parliament. As regards the drawing up of a code of conduct for LegCo Members, CMI noted that on 19 July 1995 and 3 April 1996 respectively, the former LegCo twice debated a resolution to

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<sup>1</sup> LC Paper No. CMI/20/11-12.

<sup>2</sup> A comparison of the functions of the two commissioners and other details are in Appendix III to LC Paper No. CMI/20/11-12.

authorize CMI to investigate into complaints about Members' misconduct and formulate a code of conduct for Members to follow, but both resolutions were negatived. CMI had sought the advice of Sir Malcolm Jack, a retired Clerk of the UK House of Commons, on whether the introduction of a formal code of conduct for Members was a prerequisite for the appointment of an independent commissioner to deal with complaints about Members' conduct in their capacity as such. Sir Malcolm advised that the absence of such a code would make the job of the commissioner very difficult<sup>3</sup>.

9. While some members of CMI of the Fourth LegCo were supportive of drawing up a formal code of conduct for Members and expanding the terms of reference of CMI, they were not optimistic that motions putting in place these proposals would be carried by the Council as there was no consensus amongst Members concerning the acceptable standards of behaviour of Members.

10. CMI of the Fourth LegCo considered that as a practical first step, appointing an independent person as commissioner to receive and investigate complaints against Members within the current remit of CMI, i.e. complaints relating to registration and declaration of Members' interests, OER claims and applications for advance of operating funds, was worth pursuing. CMI had considered the scope of responsibilities of the commissioner, his role and relationship with CMI and the appointment arrangements. Details of the proposal are set out in **Appendix I**.

### **Consultation with Members of the Fourth LegCo**

11. In June 2012, CMI of the Fourth LegCo consulted all Members on its proposal of appointing a Commissioner to handle complaints against Members. A copy of the questionnaire is at **Appendix II**. A total of 59 Members, except the President, responded to the questionnaire. Details of the outcome of the consultation are set out in **Appendix III**. A summary of the findings is provided as follows:

- (a) 25 Members (or 42%) agreed to the proposal of appointing a Commissioner and, among these Members, 12 Members (or

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<sup>3</sup> Sir Malcolm had advised that it would be very difficult for the commissioner to carry out his work in the absence of a code of conduct for Members because the present provisions in RoP were in too general a form to provide clear guidance and also because there would be an expectation from the public that the commissioner would also deal with wider matters relating to the conduct of Members as well (see paragraph 6, LC Paper No. CMI/39/11-12).

20%) suggested that the Commissioner should be appointed upon the passing of a motion in the Council by a four-fifths majority of the Members present;

- (b) 14 Members (or 24%) disagreed to the proposal and the reasons given were: this matter should be dealt with in the next LegCo term; no change should be made to the existing system; and the proposal would cause disputes among Members;
- (c) 11 Members (or 19%) had no comment on the proposal; and
- (d) nine Members (or 15%) did not indicate whether they supported the proposal, but commented that the proposal should be carefully considered and studied and be dealt with in the next LegCo term.

### **The way forward**

12. Members are invited to note the proposal of appointing an independent person as a commissioner, and the outcome of consultation with Members of the Fourth LegCo on the proposal, as well as advise on the way forward.

Council Business Division 3  
Legislative Council Secretariat  
23 January 2013

### **Proposal of appointing an independent person as a Commissioner to handle complaints against Members in their capacity as such**

#### Scope of responsibilities of the Commissioner

1. The Commissioner should have the following responsibilities:
  - (a) to receive and investigate complaints relating to the registration and declaration of Members' interests, claims for reimbursement of operating expenses and applications for advance of operating funds;
  - (b) to examine the views about Members received by the Complaints Division of the Legislative Council Secretariat and advise the Committee on Members' Interests on any modifications to the existing "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" after reviewing these views; and
  - (c) to provide advice to Members and their assistants as well as Secretariat staff on the interpretation of the relevant Rules of Rules of Procedure ("RoP") and compliance with these Rules.

#### Role of the Commissioner and his relationship with CMI

2. CMI should oversee the work of the Commissioner, but should not involve itself in deciding whether a case received should be followed up or in the investigation of a case. The Commissioner should independently collect information from the complainant and/or the Member concerned in deciding whether a complaint ought to be further investigated. Where an investigation is to be promulgated, the procedural steps devised by CMI would have to be followed and CMI ought to be duly informed. The Commissioner should report his findings to CMI, which should in turn decide whether or not to accept the findings in the report. In the course of investigation, the Commissioner should have access to legal advice. Upon the completion of the review of the Commissioner's report, CMI may recommend any sanction to be imposed on the Member under complaint under Rule 85 of RoP in a report to the Council. The Commissioner's role and duties as well as CMI's oversight of his work should be set out clearly in RoP.

## Appointment arrangements for the Commissioner

3. The Commissioner should be an officer of the Council<sup>1</sup>, appointed by the President upon the passing of a motion in the Council on the recommendation of the LegCo Commission which will take into account the views of CMI. The Commissioner does not necessarily have to be a former judge or have legal background, but should preferably have demonstrated expertise in at least one of the following areas: conflict of interest, dispute resolution, financial arrangements, professional regulation and discipline or ethics. The Commissioner should be appointed on a four-year term with the possibility of one renewal. To ensure continuity of services to the Council, the four-year term of office of the Commissioner should commence in the second or third legislative session of a LegCo term.

4. It is expected that the Commissioner would work on a part-time basis for a fixed number of hours per week, and as and when required for carrying out his responsibilities. The fees paid would be calculated according to the remuneration of a judge in the Court of First Instance. The overall financial implication for engaging a commissioner will be in the region of \$800,000 per annum. To avoid any possible conflict of interests, the maintenance and monitoring of the operation of the Register of Members' Interests should be made the responsibility of a separate officer of the Secretariat who would also be available to advise Members, working closely with the Commissioner's office.

Council Business Division 3  
Legislative Council Secretariat  
23 January 2013

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<sup>1</sup> Under section 2 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), officer of the Council means the Clerk or any other officer or person acting within the precincts of the Chamber under the orders of the President and includes any police officer on duty within the precincts of the Chamber.

To : Mary SO, Clerk to Committee on Members' Interests

From : \_\_\_\_\_ (Name of Member)

**Questionnaire**

*(Please return by fax (2489 0288) by Friday, 22 June 2012)*

**Committee on Members' Interests ("CMI")**

**Consultation with Members on the proposal of appointing a Commissioner to handle complaints against Members in their capacity as such**

*\* Please ✓ where appropriate.*

- I agree with CMI's proposal of appointing a Commissioner to receive and investigate complaints relating to matters which are under the remit of CMI as set out in LC Paper No. CMI/44/11-12 and have no comment.
  
- I agree with CMI's proposal of appointing a Commissioner to receive and investigate complaints which are under the remit of CMI, but:
  - disagree with the proposed **scope of responsibilities of the Commissioner** *(please specify your views below)*; and/or
  - disagree with the proposed **role of the Commissioner and his relationship with CMI** *(please specify your views below)* ; and/or
  - disagree with the proposed **appointment arrangements for Commissioner** *(please specify your views below)*.

My view(s) is/are as follows:

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- I disagree with CMI's proposal of appointing a Commissioner to receive and investigate complaints relating to matters which are under the remit of CMI. My view(s) is/are as follows:

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Signature: \_\_\_\_\_

Name of Member: \_\_\_\_\_

Date: \_\_\_\_\_

## Committee on Members' Interests ("CMI")

## Consultation with Members of the Fourth LegCo on the proposal of appointing a Commissioner to handle complaints against Members in their capacity as such

## Detailed results

Members' response to CMI's questionnaire on the proposal of appointing a Commissioner to receive and investigate complaints under the remit of CMI is as below: -

Total no. of Members who have responded to the questionnaire	59
Agree	25 [42%] (12 with suggestion)
Disagree	14 [24%]
No. of Members who have other comments	9 [15%]
No. of Members who have no comment	11 [19%] (10 replied verbally)

Agree		Disagree	Have other comments
Dr Hon David LI Hon LAU Wong-fat Hon Timothy FOK Dr Hon Joseph LEE Hon Paul CHAN Hon CHAN Kin-por Hon Paul Tse Dr Hon Samson TAM (Political affiliation undeclared/ Independents) (8 Members)	<b>but disagree with the proposed appointment arrangement for Commissioner:</b> Hon Albert HO Chun-yan Hon Fred LI Wah-ming Hon James TO Kun-sun Hon Emily LAU Wai-hing Hon CHEUNG Man-kwong Hon LEE Wing-tat Hon KAM Nai-wai Hon WONG Sing-chi (DP) (8 Members) <sup>6</sup>	Ir Dr Hon Raymond HO <sup>1</sup> Prof Hon Patrick LAU <sup>2</sup> Dr Hon LEUNG Ka-lau Hon Abraham SHEK (Political affiliation undeclared/ Independents) (4 Members)  Hon LI Fung-ying <sup>3</sup> (FHKKLU) (1 Member)  Hon Mrs Sophie LEUNG Hon Jeffrey LAM Hon Andrew LEUNG (BPA/ES) (3 Members)  Hon Frederick FUNG Kin-kee (HKADPL) (1 Member)  Dr Hon Priscilla LEUNG (PF) (1 Member)  Hon Mrs Regina IP (NPP) (1 Member)  Hon Miriam LAU Kin-ye Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang (LP) (3 Members) <sup>4</sup>	Hon CHAN Kam-lam Hon WONG Yung-kan Hon LAU Kong-wah Hon TAM Yiu-chung Hon CHEUNG Hok-ming Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him (DAB) (9 Members) <sup>5</sup>
Dr Hon Margaret NG Hon Audrey EU Hon Ronny TONG Hon Alan LEONG Hon Tanya CHAN (CP) (5 Members)	Hon LEE Cheuk-yan <sup>7</sup> (HKCTU) (1 Member)  Hon CHEUNG Kwok-che <sup>8</sup> (HKSWGU) (1 Member)  Hon LEUNG Yiu-chung <sup>9</sup> (NWSC) (1 Member)  Hon Cyd HO Sau-lan <sup>10</sup> (CA) (1 Member)		<b>Have no comment</b> Hon WONG Kwok-hing Hon WONG Kwok-kin Hon IP wai-ming Dr Hon PAN Pey-chyou (HKFTU) (4 Members)*  Hon Andrew CHENG Hon CHIM Pui-chung Dr Hon LAM Tai-fai (Political affiliation undeclared/Independents) (3 Member)*  Dr Hon Philip WONG* (BPA) (1 Member)  Hon LEUNG Kwok-hung* (LSD) (1 Member)  Hon Albert CHAN* (PP) (1 Member)  Hon WONG Yuk-man (PP) (1 Member)

\* Members verbally replied to the Secretariat that they have no comment on the questionnaire.

<sup>1</sup> No change should be made to the existing system.

<sup>2</sup> ditto.

<sup>3</sup> The proposal would cause disputes among Members.

<sup>4</sup> This matter should be dealt with in the next LegCo term.

<sup>5</sup> The proposal should be carefully considered and studied and be dealt with in the next LegCo term.

<sup>6</sup> The Commissioner should be appointed upon the passing of a motion in the Council by a four-fifths majority of the Members present.

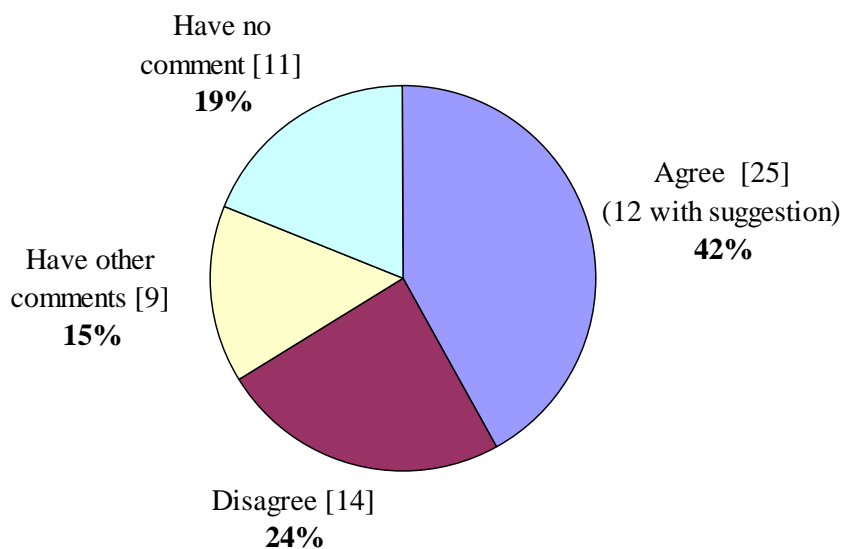
<sup>7</sup> ditto.

<sup>8</sup> ditto.

<sup>9</sup> ditto.

<sup>10</sup> ditto.

Members' response to CMI's questionnaire on the proposal of appointing a Commissioner



Abbreviations

BPA	Business and Professionals Alliance
CA	Civic Act-up
CP	Civic Party
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong
DP	Democratic Party
ES	Economic Synergy
FHKKLU	The Federation of Hong Kong and Kowloon Labour Unions
HKADPL	Hong Kong Association for Democracy and People's Livelihood
HKCTU	Hong Kong Confederation of Trade Unions
HKFTU	The Hong Kong Federation of Trade Unions
HKSWGU	Hong Kong Social Workers' General Union
LP	Liberal Party
LSD	League of Social Democrats
NPP	New People's Party
NWSC	Neighbourhood and Workers' Service Centre
PF	The Professionals Forum
PP	People Power