

# 立法會

## *Legislative Council*

LC Paper No. CMI/49/12-13

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

### **Committee on Members' Interests Paper for the meeting on 30 April 2013**

#### **Outcome of consultation with Members on whether an independent person should be appointed as a Commissioner to receive and investigate complaints against Members**

#### **Purpose**

This paper reports on the outcome of consultation with Members on whether an independent person should be appointed as a Commissioner to receive and investigate complaints against Members which are within the remit of the Committee on Members' Interests ("CMI").

#### **Background**

2. CMI of the Fourth Legislative Council ("LegCo") conducted a review on the existing mechanisms under the Rules of Procedure for dealing with complaints against Members in their capacity as such and studied the mechanisms adopted by some selected overseas legislatures for handling complaints against their members. To address the public concern about Members conducting investigations into complaints made against their fellow legislators and having made reference to the mechanism for investigating complaints against Members of Parliament in the House of Commons of the United Kingdom ("UK"), CMI worked out a proposal of appointing an independent person as a Commissioner to receive and investigate complaints against Members which were within its remit, and consulted all Members of the Fourth LegCo on the proposal towards the end of the term. CMI agreed that its proposal and the consultation outcome should be reported to CMI of the Fifth LegCo for consideration.

## **Deliberations on the proposal by CMI of the current LegCo term**

3. At the meeting of CMI held on 28 January 2013, members deliberated on whether an independent person should be appointed as a Commissioner to receive and investigate complaints against Members which are within the remit of CMI<sup>1</sup>. Members have expressed diverse views on the matter. The reasons given in support of appointing a Commissioner are that the appointment of a Commissioner will address the public concern about Members conducting investigation into the conduct of their fellow legislators, and the complaint handling process will be expedited by entrusting the investigatory work with the Commissioner. There are however reservations about appointing a Commissioner and the reasons given include: the appointment of a Commissioner will not absolve CMI from its role in handling complaints against Members (i.e. Members conducting investigation into the conduct of their fellow legislators) as CMI still has to decide whether to accept the Commissioner's findings and whether sanction should be recommended; CMI should be in a better position to decide whether sanction should be recommended if the investigation is conducted by its members; unlike the UK House of Commons which has 650 Members, LegCo has a membership of 70 only and the relatively small number of complaints may not justify the appointment of a Commissioner, at least for the time being; the appointment of a Commissioner may provide a ready channel for lodging frivolous complaints against Members; and the LegCo Secretariat has the expertise and manpower resources in handling matters relating to claims for reimbursement of operating expenses and providing services to CMI in conducting investigations against Members.

4. Given the diverse views expressed by members, CMI decided that before considering the matter further, all Members should be consulted, by way of a questionnaire, on whether an independent person should be appointed as a Commissioner to receive and investigate complaints against Members which are within its remit. Accordingly, the Clerk to CMI issued the questionnaire on 18 February 2013, inviting all Members to give their views on the matter<sup>2</sup>.

## **Outcome of consultation with Members**

5. A total of 69 Members, i.e. all Members except the President, responded to the questionnaire. The consultation outcome is set out in the **Appendix**, a summary of which is as follows:

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<sup>1</sup> The discussion paper for the meeting is LC Paper No. CMI/27/12-13.

<sup>2</sup> The circular attached with the questionnaire is LC Paper No. CMI/30/12-13.

- (a) 23 Members (or 33.3%) agree that an independent person should be appointed as a Commissioner. Among them:
- (i) nine Members consider that the appointment of a Commissioner should require the passage of a motion<sup>3</sup> in the Council by a four-fifths majority of all Members of the Council, and one Member considers such a motion should require the passage by a four-fifths majority of the Members present;
  - (ii) one Member considers that CMI should propose a mechanism for the appointment of the Commissioner and consult Members again; and
  - (iii) one Member considers that the Commissioner should be appointed only when there is a case required to be followed up;
- (b) 34 Members (or 49.3%) disagree that an independent person should be appointed as a Commissioner. Among them, one Member indicates that he is not supportive of any proposed change before there is a clear mechanism for appointing the Commissioner; and
- (c) 12 Members (or 17.4%) have no view on the matter.

## **The way forward**

6. Members are invited to note the outcome of consultation with Members as set out in paragraph 5 above, and decide the way forward.

Council Business Division 3  
Legislative Council Secretariat  
13 March 2013

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<sup>3</sup> Rule 46(1) and (2) of the Rules of Procedure:

- (1) Except as otherwise provided in Rules 49B (Disqualification of Member from Office) and 66 (Bills Returned for Reconsideration) and Articles 52(2), 73(9) (in respect of a motion of impeachment) and 159 of and Annex I and Annex II to the Basic Law, the passage of all motions before the Council or a committee of the whole Council shall, subject to subrule (2), require a majority vote of the Members present.
- (2) The passage of a motion (other than a motion moved under any of the excepted Rules or Articles of the Basic Law referred to in subrule (1)) or bill introduced by a Member, or an amendment introduced by a Member to any motion or bill, shall require a majority vote of each of the following two groups of Members present –
  - (a) Members returned by functional constituencies (Group I); and
  - (b) Members returned by geographical constituencies through direct elections (Group II).

## Committee on Members' Interests

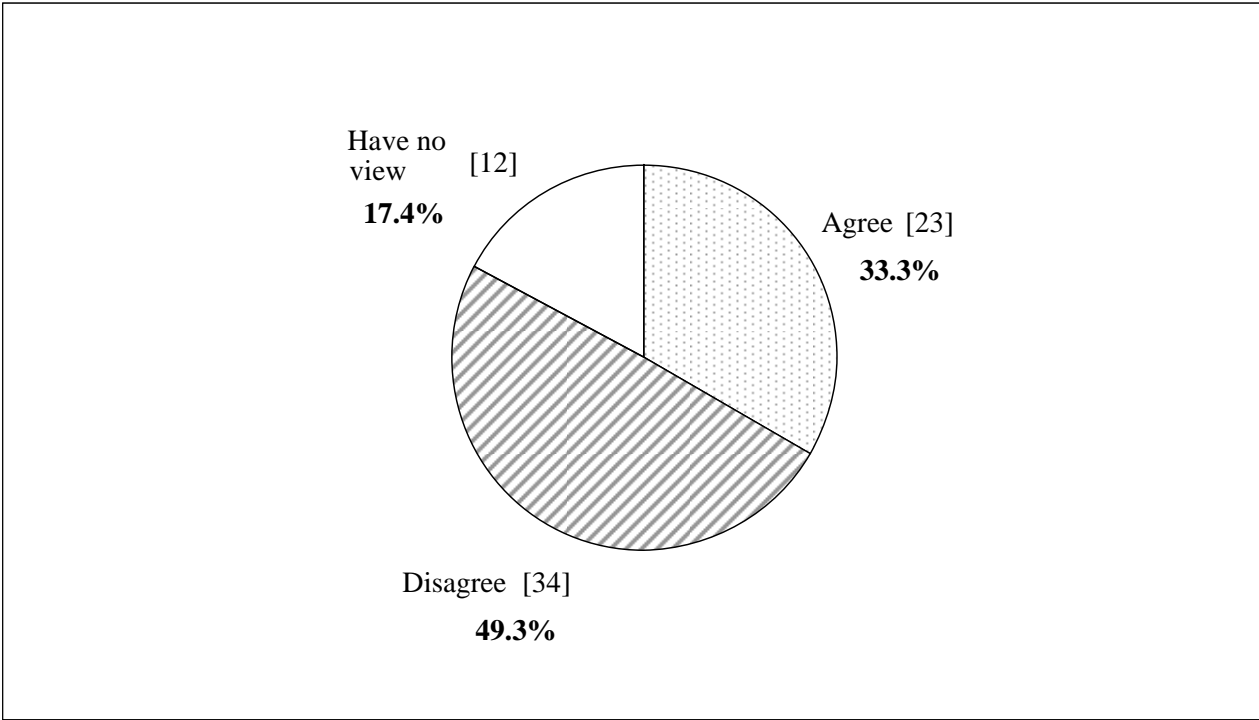
**Outcome of consultation with Members on whether  
an independent person should be appointed as a Commissioner  
to receive and investigate complaints against Members**

Total number of responding Members	69
Agree	23 [33.3%] (12 with other views)
Disagree	34 [49.3%] (1 with other view)
Have no view	12 [17.4%]

Agree	Disagree	Have no view
Hon Ronny TONG Ka-wah Hon Alan LEONG Kah-kit Hon Claudia MO Dr Hon Kenneth CHAN Ka-lok Dr Hon KWOK Ka-ki Hon Dennis KWOK (CP) (6 Members)	Hon CHAN Kam-lam Hon TAM Yiu-chung Hon WONG Ting-kwong Hon Starry LEE Wai-king Hon CHAN Hak-kan Hon IP Kwok-him Hon Steven HO Chun-yin Hon CHAN Han-pan Hon LEUNG Che-cheung Dr Hon Elizabeth QUAT Dr Hon CHIANG Lai-wan Hon Christopher CHUNG Shu-kun (DAB) (12 Members)	Hon WONG Kwok-hing Hon WONG Kwok-kin Hon CHAN Yuen-han Hon Alice MAK Mei-kuen Hon KWOK Wai-keung Hon TANG Ka-piu (HKFTU) (6 Members)
Hon Albert HO Chun-yan Hon James TO Kun-sun Hon Emily LAU Wai-hing Hon WU Chi-wai Hon SIN Chung-kai Dr Hon Helena WONG Pik-wan (DP) (6 Members) <sup>1</sup>	Dr Hon LAU Wong-fat Hon Abraham SHEK Lai-him Hon Jeffrey LAM Kin-fung Hon Andrew LEUNG Kwan-yuen Dr Hon Priscilla LEUNG Mei-fun Hon Christopher CHEUNG Wah-fung Ir Dr Hon LO Wai-kwok (BPA) (7 Members)	Hon Gary FAN Kwok-wai (ND) (1 Member)
Hon LEE Cheuk-yan <sup>2</sup> Hon Cyd HO Sau-lan <sup>1</sup> Hon CHEUNG Kwok-che <sup>3</sup> Dr Hon Fernando CHEUNG Chiu-hung <sup>1</sup> (LabP) (4 Members)	Hon Tommy CHEUNG Yu-yan Hon Vincent FANG Kang Hon James TIEN Pei-chun Hon Frankie YICK Chi-ming Hon CHUNG Kwok-pan (LP) (5 Members)	Hon LEUNG Kwok-hung (LSD) (1 Member)
Hon Charles Peter MOK Hon Kenneth LEUNG (PC) (2 Members)		Hon LEUNG Yiu-chung (NWSC) (1 Member)
Hon Michael TIEN Puk-sun (NPP) (1 Member)		Hon MA Fung-kwok (NCF) (1 Member)
Dr Hon Joseph LEE Kok-long Hon CHAN Kin-por <sup>4</sup> Hon Paul TSE Wai-chun Hon IP Kin-yuen <sup>1</sup> (Political affiliation undeclared/ Independents) (4 Members)		Dr Hon LAM Tai-fai Hon YIU Si-wing (Political affiliation undeclared/ Independents) (2 Members)
	Hon Albert CHAN Wai-yip Hon WONG Yuk-man Hon CHAN Chi-chuen (PP) (3 Members)	
	Hon Mrs Regina IP LAU Suk-yeet (NPP) (1 Member)	
	Hon Frederick FUNG Kin-kee (HKADPL) (1 Member)	
	Hon POON Siu-ping (FHKCLU) (1 Member)	
	Hon Tony TSE Wai-chuen <sup>5</sup> Hon Martin LIAO Cheung-kong Dr Hon LEUNG Ka-lau Hon NG Leung-sing (Political affiliation undeclared/ Independents) (4 Members)	

## Other views:

- <sup>1</sup> If the Council agrees to appoint a Commissioner, it is proposed that the appointment shall require the passage of a motion in the Council by a four-fifths majority of all Members of the Council.
- <sup>2</sup> The appointment of the Commissioner shall require the passage of a motion by a four-fifths majority of the Members present.
- <sup>3</sup> There should be a mechanism for appointing the independent person. CMI is invited to propose a mechanism for consultation with Members again.
- <sup>4</sup> The appointment should be made only when there is a case required to be followed up.
- <sup>5</sup> Any proposed change is not supported before there is a clear mechanism for appointing the Commissioner.



Abbreviations

- BPA Business and Professionals Alliance for Hong Kong
- CP Civic Party
- DAB Democratic Alliance for the Betterment and Progress of Hong Kong
- DP Democratic Party
- FHKKLU The Federation of Hong Kong and Kowloon Labour Unions
- HKADPL Hong Kong Association for Democracy and People's Livelihood
- HKFTU The Hong Kong Federation of Trade Unions
- LabP Labour Party
- LP Liberal Party
- LSD League of Social Democrats
- NCF New Century Forum
- ND Neo Democrats
- NPP New People's Party
- NWSC Neighbourhood and Worker's Service Centre
- PC The Professional Commons
- PP People Power