

# 立法會

## *Legislative Council*

LC Paper No. CMI/5/12-13

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### **Committee on Members' Interests** **Paper for the meeting on 26 November 2012**

#### **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**

#### **Purpose**

This paper invites members to note "The procedure of the Committee on Members' Interests for handling complaints received in relation to the registration or declaration of Members' Interests or claims for reimbursement of operating expenses" ("the Procedure") and issue it to Members of the Fifth Legislative Council ("LegCo"). It also sets out for consideration by the Fifth LegCo the issues relating to the Procedure that have been reviewed by the Committee on Members' Interests ("CMI") of the Fourth LegCo.

#### **Background**

2. Under Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP"), two of the functions of CMI are to consider any complaint made in relation to the registration and declaration of Members' interests, or Members' claims for reimbursement of operating expenses and 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 favouritism 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 LegCo<sup>1</sup> and

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

issued it to all Members. Since then, the Procedure was issued by CMI to all Members at the beginning of each legislative term. The Procedure issued by CMI of the Fourth LegCo, which primarily was the same as the version issued to Members of the First LegCo, is in the **Appendix**.

### **Review of the Procedure by the Fourth LegCo.**

4. In the light of the experience gained in handling the complaint cases within its remit, CMI of the Fourth LegCo reviewed the Procedure and identified points for improvement. They are set out in the ensuing paragraphs.

#### Time limits

5. Paragraphs 1, 3 and 4 of the Procedure specify the respective time limits within which (i) the Chairman should decide whether a meeting should be held to consider a complaint (*two working days*), (ii) a meeting should be held after the Chairman has so decided (*seven working days*), and (iii) the Clerk should be informed if members disagree with the Chairman's decision of not holding a meeting (*three working days*).

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 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 first meeting to consider a complaint

7. The Procedure is silent on the purpose of holding the first meeting to consider a complaint. CMI considered it necessary to stipulate expressly in the Procedure that the purpose of the first meeting or the first series of meetings was for CMI to decide whether the complaint was to be followed up, taking into account information provided by the complainant, the relevant provisions of RoP and any other matters which CMI considered relevant for making the decision.

8. Apart from the above, CMI considered that the following issues should be further examined:

- (a) whether information other than that provided by the complainant should be considered at the first meeting;
- (b) whether the Member under complaint ought to be informed if CMI decided not to consider the complaint after the first meeting;
- (c) whether the steps to be taken in the Preliminary Consideration Stage should be more clearly set out; and
- (d) whether CMI should proceed to the Investigation Stage if CMI was able to form the opinion that the complaint is substantiated at the Preliminary Consideration Stage, but the Member under complaint did not admit the allegations or agree to CMI's view.<sup>2</sup>

9. As the proposal of appointing 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 complaint regime and followed up by the Fifth LegCo.

### **Advice sought**

10. Members are invited to note the Procedure. For the purpose of enabling Members, complainants and members of the public to know the procedure that CMI will follow in handling complaints within its remit, members are also invited to issue it to all Members of the Fifth LegCo and upload it onto the LegCo web site. In relation to the points identified for improving the Procedure, and the proposal to appoint a commissioner to assist CMI in the handling of complaints against Members, members may wish to decide the way forward.

Council Business Division 3  
Legislative Council Secretariat  
21 November 2012

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<sup>2</sup> Paragraph (11) of the Procedure provides that CMI may decide that an enquiry is not necessary when the complaint was found to be substantiated and the Member under complaint "admits all the allegations" during the Preliminary Consideration Stage.

**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.