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Committee on Members' Interests
Paper for the meeting on 29 January 2014

Proposed revision of the procedure for handling complaints

Purpose

This paper invites members of the Committee on Members' Interests ("CMI") to consider the direction and principles proposed to be adopted for amending "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").

Background

2. At its meeting held on 28 January 2013, CMI considered the amendments to the Procedure proposed by CMI of the Fourth Legislative Council ("LegCo") in the light of its experience in handling a number of complaints. CMI agreed that the Procedure be revised:

- (a) to extend the time limit for the Chairman to decide whether a meeting on a complaint received by CMI should be held from two to three working days;
- (b) to extend the time limit for scheduling the first meeting after the Chairman has so decided from seven to 10 working days;
- (c) to delineate clearly between the Preliminary Consideration Stage ("PC Stage") and the Investigation Stage ("INV Stage") of a complaint, including the circumstances under which CMI should proceed from the former to the latter, as well as to set out the procedural steps of the two stages more clearly;
- (d) to enable CMI to consider readily available information relevant to a complaint during the PC Stage, such as media reports; and

- (e) to allow Members to give advance instructions on whether they would like to be informed of any complaints against them which CMI decided not to consider.

3. To take forward the proposal to revise the Procedure, the Secretariat considers it necessary for CMI to agree on the direction and principles for dealing with a number of key issues which are elaborated in the ensuing paragraphs.

Disposal of complaints which CMI will not consider or are outside its purview

4. Under the existing Procedure, a complaint that meets the following descriptions will not be considered by CMI, but the Clerk has to seek instruction from the Chairman of CMI before so informing the complainant and circulating the complaint to members—

- (a) the complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted; or
- (b) the complaint is made against a former Member; or
- (c) the complaint is about a Member's act or omission which allegedly took place seven years or more prior to the date of the complaint¹.

5. To streamline the Procedure, it is proposed that the Clerk to CMI be authorized to deal with a complaint that meets the descriptions in paragraph 4 above or falls outside the purview of CMI as provided under Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP"). Upon the receipt of such a complaint, the Clerk will forthwith inform the complainant (if he could be contacted) that CMI will not consider the complaint and circulate the complaint to members for information.

Purpose of the PC Stage

6. The purposes of the PC Stage as provided in the existing Procedure are to (i) ascertain the subject of the complaint and the provisions of the RoP relevant to the allegations in question, and (ii) to gather information relevant to the complaint and the allegations in question. At this Stage, CMI may

¹ Paragraph (1) of the Procedure.

ask the Member under complaint to provide information and for such purpose invite, or invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order, the Member under complaint to attend its meetings. Based on the information gathered, CMI may form an opinion on whether the complaint is substantiated and recommend to the Council as to whether the Member under complaint should be sanctioned.

7. Drawing from the experience of CMI of the previous terms in handling complaints, members have the following observations:

- (a) the PC Stage could take a very long time, as in one case it lasted 18 months during which 20 meetings were held;
- (b) consideration of the complaints at the PC Stage was in essence an investigation as the Member under complaint was asked to give explanations and provide information in relation to the complaint; and
- (c) whether CMI should proceed to the INV Stage depends on whether the allegations against the Member under complaint have been admitted at the PC Stage².

8. CMI members consider it necessary to address the above issues and are of the view that should a complaint be ascertained to be within the terms of reference of CMI and after considering readily available information, CMI should then decide whether or not to pursue the complaint, and if CMI decides to pursue the complaint, it should proceed to the INV Stage.

9. It is proposed that the Procedure be revised so that upon receipt of a complaint which could not be disposed of under paragraph 5 above, the Chairman should decide within three working days whether a meeting should be held to consider the complaint. If the Chairman decides that CMI should hold a meeting, the meeting should be held within 10 working days. Same as the existing Procedure, members of CMI may indicate their disagreement should the Chairman decide not to hold a meeting to consider the complaint, and if the majority of the CMI members (excluding the Chairman) consider it necessary to hold a meeting, a meeting must be held to consider the complaint and the date of which should be decided by the Chairman.

10. It is proposed that the Procedure be revised to provide that the purpose of the PC Stage is to decide whether CMI should investigate the complaint after considering the subject of the complaint, the rules of the RoP

² Paragraph (11) of the Procedure.

relevant to the complaint and all readily available information. Once CMI has decided to investigate the complaint, it will proceed to the INV Stage. Where CMI decides not to investigate the complaint, the complainant will be advised of CMI's decision and the reasons therefor. In contrast to the existing Procedure, where the Member under complaint may be asked to give information or invited or ordered under Cap. 382 to attend CMI's meetings during the PC Stage, it is proposed that under the revised Procedure, CMI will take such actions only after it has proceeded to the INV Stage.

11. The proposed revised Procedure could address the issues mentioned in paragraph 7 above as the PC Stage is expected to be short, there will be clear distinction between the PC Stage and the INV Stage, and the decision to proceed to the INV Stage will rest entirely with CMI. However, should such an approach be adopted, CMI must proceed to the INV Stage to deal with the complaints even when they may be trivial.

Investigation of complaint at the INV Stage

12. The following salient features in the existing Procedure are proposed to be retained at the INV Stage in the revised Procedure:

- (a) CMI may invite or order any person under Cap. 382 to attend its meetings and produce documents;
- (b) the Member under complaint may be accompanied by a maximum of three persons to attend CMI meetings but the accompanying persons may not address CMI;
- (c) CMI should hold its meetings/hearings to investigate the complaint in private unless the Member under complaint requests otherwise;
- (d) CMI may suspend its investigation if the complaint is, or related matters are, being investigated by a law enforcement agency or is/are related to a case pending in a court of law;
- (e) CMI should provide the findings of its investigation to the Member under complaint and consider his/her views before finalizing the findings; and
- (f) upon completion of the investigation, CMI should report to the Council and advise the complainant of its findings.

Considerations for recommending a sanction

13. Under the existing Procedure, where CMI finds a complaint to be substantiated, it may make a recommendation on whether any sanction should be imposed on the Member under complaint under Rule 85 of RoP³. In considering whether or not to recommend a sanction to be imposed on the Member under complaint found to have breached the relevant rule(s), CMI of the previous and current terms have taken into account the following factors:

- (a) whether the breach of the relevant rules by the Member is a deliberate act; and
- (b) whether the breach involves any conflict of interests with the Member's role as a Member of LegCo.

14. The factor in (a) above is provided in the existing Procedure⁴. Members may wish to consider, apart from (a), whether any other factors, such as (b), which may be taken into account by CMI should also be set out in the revised Procedure. Such factors should not be taken to be exhaustive, and CMI will consider each case on the basis of its own circumstances and facts.

15. A flowchart showing the major steps for handling a complaint under the proposed revised Procedure is in the **Appendix**.

Advice sought

16. Subject to members' views on the proposed direction and principles for dealing with the key issues as elaborated above, the Secretariat will draft the revised Procedure for members' consideration.

Council Business Division 3
Legislative Council Secretariat
24 January 2014

³ Rule 85 of RoP provides that any Member who fails to comply with Rule 83, 83AA, 84(1) or (1A) may be admonished, reprimanded or suspended by the Council on a motion to that effect.

⁴ Paragraph (19) of the Procedure.

Flowchart on the handling of a complaint by the Committee on Members' Interests ("CMI")

