

**立法會**  
***Legislative Council***

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**Committee on Members' Interests**  
**Paper for the meeting on 29 April 2014**

**Proposed revised procedure for handling complaints**

**Purpose**

This paper invites members of the Committee on Members' Interests ("CMI") to consider the proposed revised procedure of CMI for handling complaints ("the Procedure").

**Background**

2. At its meetings held on 28 January 2013 and 29 January 2014, CMI considered proposals to amend the existing Procedure, which were made in the light of the experience in handling complaints of CMI in the Fourth and the Fifth Legislative Council ("LegCo"). CMI agreed to the following principles for revising the Procedure :

- (a) to authorize the Clerk to CMI to dispose of any complaint which CMI will not consider under the existing Procedure<sup>1</sup> or which falls outside its purview;
- (b) to extend the time limit for the Chairman to decide whether to hold a meeting to consider a complaint received by CMI and that for scheduling such a meeting after the Chairman has so decided;

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<sup>1</sup> Under paragraph (1) of the existing Procedure, CMI will not consider any complaint that meets the following descriptions:

- (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 complaint.

The Chairman's instruction will be sought to circulate such complaint to members for information.

- (c) to allow Members to give advance instructions on whether they would like to be informed of any complaint against them which CMI has decided not to consider or investigate;
- (d) to delineate clearly between the Consideration Stage and the Investigation Stage ("INV Stage") of handling of a complaint by expressly providing that the purpose of meetings held under the Consideration Stage is to decide whether CMI should conduct an investigation into the complaint and once CMI has so decided, it will proceed to the INV Stage;
- (e) to enable CMI to consider readily available information relevant to a complaint during the Consideration Stage, such as media reports;
- (f) to retain the salient features of the INV Stage of the existing Procedure which include, among other things, the discretion of CMI to invite or order by summons any person to attend its meetings and the right of the Member under complaint when attending CMI's meetings and in respect of CMI's draft report on the complaint; and
- (g) to provide that CMI may take into account whether a breach of the relevant rule(s) by the Member under complaint involves any conflict of interests with the Member's role as a Member of LegCo when considering the making of a recommendation or otherwise of a sanction of the Member.

### **Proposed revised Procedure**

3. In accordance with the above principles, the Procedure is proposed to be revised as in **Appendix I**. The revised Procedure consists of seven Parts and the main contents of each of which are highlighted below:

- (a) Part I : Initial handling of a complaint

This Part sets out the steps to be followed by the Clerk to CMI in handling a complaint received by CMI. It also stipulates the respective timeframes for the Chairman to make a decision on whether or not to hold a meeting to consider a complaint, members of CMI to indicate disagreement with the Chairman's decision of not to hold a meeting, and the holding of the meeting to consider the complaint.

(b) Part II: Consideration of a complaint

This Part specifies the purpose of the meeting held to consider a complaint and the information to be taken into account by CMI in deciding whether or not to conduct an investigation into the complaint.

(c) Part III: Investigation of a complaint

This Part elaborates the course of action which may be taken by CMI in investigating a complaint, its powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and the rights of the Member under complaint when attending meetings of CMI.

(d) Part IV: Report to the Council

This Part stipulates the requirements for CMI to provide the relevant parts of the draft report to the Member under complaint for a response and to report to the Council after completion of its investigation of the complaint as well as the evidence taken forming part of the report. It also sets out the factors which may be taken into account by CMI in deciding whether or not to recommend a sanction of the Member under complaint.

(e) Part V: Suspension of work on a complaint

This Part sets out the circumstances under which CMI may decide to suspend its consideration or investigation of a complaint.

(f) Part VI: Confidentiality requirements

This Part provides for the requirements for members and other persons concerned to sign a confidentiality undertaking of not making premature publication of evidence related to a complaint.

(g) Part VII: Participation of members in the handling of complaints

This Part prohibits a CMI member from participating in the handling of a complaint where the complaint is made by or against that member.

4. The principles in paragraph 2(a) to (e) above are reflected in the proposed Parts I and II of the revised Procedure. Parts III of the revised Procedure is based on the relevant paragraphs in the existing Procedure, with textual refinements and incorporation of the principle in paragraph 2(f)

above. Apart from incorporating the principle in paragraph 2(g) above, Part IV of the revised Procedure also provides that CMI is required to report to the Council after completion of investigation of a complaint. This requirement is different from the existing Procedure (paragraph (20)) under which CMI may decide whether to report to the Council if a complaint is not substantiated. Parts V to VII are essentially reproduction of the relevant paragraphs in the existing Procedure, with minor textual amendments. The major differences between the existing and the revised Procedures are in **Appendix II**.

### **Advice sought**

5. Members are invited to consider the proposed revised Procedure in Appendix I. Subject to members' views, all Members of LegCo will be consulted on the revised Procedure.

Council Business Division 3  
Legislative Council Secretariat  
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**Draft**  
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**Procedure of the  
Committee on Members' Interests  
for Handling Complaints**

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## **Procedure of the Committee on Members' Interests for Handling Complaints**

### **Part I: Initial handling of a complaint**

1. All complaints lodged with the Committee on Members' Interests ("the Committee"), whether by a Member or a member of the public ("the complainant"), must be in writing. The complainant's identity will be disclosed to the Member under complaint and in any report on the complaint made by the Committee to the Council.
2. Where a complaint:
  - (a) is made by an anonymous person, or by a person (i) who cannot be contacted, (ii) whose identity cannot be verified, or (iii) who has refused to allow his or her identity to be disclosed; or
  - (b) is made against a former Member; or
  - (c) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of receipt of the complaint; or
  - (d) is outside the purview of the Committee, as set out in Rule 73(1)(c) and (ca) of the Rules of Procedure ("the RoP"),

the Clerk should send a written reply to the complainant, if the complainant can be contacted, that the Committee will not consider the complaint, and circulate the complaint and the written reply to members of the Committee ("members"). Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member. If item (a)(iii) of this paragraph is applicable, the Clerk should block out the information in relation to the identity of the complainant before forwarding the complaint to the Member under complaint.
3. Unless the complaint has been disposed of under paragraph 2, the Clerk should invite the Chairman to decide whether the Committee should hold a meeting to consider the complaint. The Chairman should inform the Clerk of such a decision within three working days from the date of being notified of the complaint.

4. The Chairman may decide not to hold a meeting to consider the complaint for the following reasons:
  - (a) the complaint is based merely on speculations, inferences or unfounded judgements; or
  - (b) the complaint involves substantially repeated allegations which have already been dealt with by the Committee and no fresh information has been produced; or
  - (c) other reasons the Chairman deems appropriate.
  
5. If the Chairman decides not to hold a meeting to consider the complaint, the Chairman should inform the Clerk of the reason(s) for the decision. The Clerk should then forward the Chairman's decision and the reason(s) therefor to members by a circular. Any member disagreeing with the Chairman's decision should reply to the Clerk within three working days from the date of the circular.
  - (a) If the Clerk has received replies from a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman should forthwith direct the Clerk to arrange a meeting to be held within 10 working days to consider the complaint.
  - (b) If the Clerk has received replies from less than a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman's decision and reason(s) therefor will be deemed to be those of the Committee and the Committee will not take further action on the complaint. The Clerk should forward the Committee's decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member.
  
6. If the Chairman decides to hold a meeting to consider the complaint, the Clerk should arrange for the meeting to be held within 10 working days from receipt of notification of such a decision.

## **Part II: Consideration of a complaint**

7. The Committee may hold one or more closed meetings for consideration of a complaint. The purpose of such meeting(s) is to decide whether the Committee will conduct an investigation into the complaint after taking into

account the following:

- (a) the information contained in the complaint;
  - (b) the relevant rules(s) that the Member under complaint is alleged to have breached; and
  - (c) any other relevant information readily available, such as records of interests registered by the Member under complaint, A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council ("Reimbursement Guide"), media reports, etc.
8. If the Committee decides not to conduct an investigation into the complaint, it will not take further action on the complaint. The Clerk should forward the decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not investigate, the Clerk should forward the complaint and the written reply to the Member.
9. If the Committee decides to conduct an investigation into the complaint, the Clerk should inform the Member under complaint of the complaint and the Committee's decision.

### **Part III: Investigation of a complaint**

10. The Committee may hold one or more meetings for investigation of a complaint. During the investigation of a complaint, the Committee may:
- (a) invite the Member under complaint to provide information in writing and/or to attend the Committee's meeting(s) to give explanations and provide information;
  - (b) invite the complainant or any other persons to provide information in writing and/or to attend the Committee's meeting(s) to provide information; and
  - (c) gather or cause to be gathered information relevant to the complaint from any other sources as the Committee deems appropriate.
11. If the complaint relates to a Member's claims for reimbursement of operating expenses or applications for advance of operating funds, the Committee should have regard to the provisions of the Reimbursement Guide, as provided in Rule 73(1A) of the RoP.
12. The Committee may invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order by summons



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 that person.

13. The Committee may cause any person summoned to attend before it to be examined upon oath, and ask the person to verify upon oath any information and statements that the person has provided previously or at any previous meetings.
14. Meetings of the Committee for investigating the complaint should be closed meetings unless the Committee has acceded to the request of the Member under complaint, or of any person invited or ordered to attend the relevant meeting(s), that they be held in public.
15. In attending meeting(s) before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving the Member assistance or advice ("accompanying persons"). The accompanying persons may be different persons for different sessions of meetings of the Committee and may include legal adviser(s). The accompanying persons are not allowed to address the Committee. The Member under complaint must answer questions, give explanations or provide information personally.

#### **Part IV: Report to the Council**

16. Upon completion of investigation of the complaint, the Committee should submit a report on the complaint to the Council under Rule 73(1)(e). The relevant parts of the draft of the report should be forwarded to the Member under complaint, subject to the Member signing of a confidentiality undertaking referred to in paragraph 23. The Member under complaint may, within seven working days from the date of receipt of the relevant parts of the draft report, make a written response to the Committee.
17. After considering the written response of the Member under complaint under paragraph 16, if any, the Committee may finalize its report. The transcripts of evidence taken at meeting(s) should be published in full as far as possible in, and form part of, the Committee's report to the Council.
18. Where the Committee is of the opinion that the Member under complaint has breached any of the relevant rule(s) of the RoP, the Committee may make a recommendation on sanction of the Member under Rule 85 of the RoP. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee may take into account, among other things,

whether there is evidence that the breach of the relevant rule(s) of the RoP by the Member under complaint:

- (a) was a deliberate act; and
- (b) involved any conflict of interests with the Member's role as a Legislative Council Member.

19. Upon reporting to the Council, the Committee should make available a copy of the report to the complainant.

#### **Part V: Suspension of work on a complaint**

20. If, in the course of considering or investigating a complaint, the Committee has come to the knowledge that the complaint is or matters related to it are being investigated by a law enforcement agency or related to a case pending in a court of law, the Committee may suspend its consideration or investigation of the complaint until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

#### **Part VI: Confidentiality requirements**

21. All members, and other persons attending closed meetings of the Committee (except the Member under complaint), must each sign a confidentiality undertaking that the member or person will not publish, without the prior written authorization of the Committee, any matter relating to the proceedings of closed meetings of the Committee, including evidence taken before the Committee, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the Committee to the Council.
22. Where the Committee finds that a member or any person has breached the undertaking given to the Committee, the Committee will consider whether and how to deal with the member or that 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 RoP, or passing a motion of the Committee expressing its disapproval of the member or that person for breaching the undertaking.
23. Before the Committee forwards the relevant parts of its draft report to the Member under complaint under paragraph 16, the latter must sign a confidentiality undertaking that the Member will not publish, without the prior written authorization of the Committee, any matter relating to the draft report, except such matter that has already been published or contained in any report

presented by the Committee to the Council. Where the Committee finds that the Member under complaint has breached the undertaking given to the Committee, the Committee may 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.

**Part VII: Participation of members in the handling of complaints**

24. No member is allowed to participate as a member of the Committee in the handling of a complaint or to attend any of the meetings of the Committee to deliberate on or inquire into a complaint where the complaint is made by or against that member.



Major differences between the existing and revised Procedures

Issues	Existing Procedure	Revised Procedure
(a) <i>Disposal of complaints which CMI will not consider or which fall outside its purview</i>	Clerk to seek instruction of Chairman ( <i>paragraph (1)</i> )	Clerk is authorized to handle ( <i>paragraph 2</i> )
(b) <i>Disclosure and making public of the complainant's identity</i>	Nil	To disclose, except where a complaint is not followed up because of the complainant's refusal to have his/her identity disclosed ( <i>paragraphs 1 and 2</i> )
(c) <i>Time limit for Chairman to decide whether to hold a meeting to consider a complaint</i>	2 working days ( <i>paragraph (1)</i> )	3 working days ( <i>paragraph 3</i> )
(d) <i>Time limit for scheduling a meeting to consider a complaint after Chairman has decided to hold a meeting</i>	7 working days ( <i>paragraphs (3) and (4)</i> )	10 working days ( <i>paragraphs 5(a) and 6</i> )
(e) <i>Members under complaint to indicate wish to be informed of complaint which CMI has decided not to consider or investigate</i>	Nil	Members may give advance instructions ( <i>paragraphs 2, 5(b) and 8</i> )
(f) <i>Purpose of and course of actions in the Preliminary Consideration Stage</i>	To ascertain the subject of the complaint and gather information on the complaint. During that stage, CMI may (a) invite or order the Member under complaint and the complainant to	To decide whether CMI will conduct an investigation into the complaint ( <i>paragraph 7</i> )

<b>Issues</b>	<b>Existing Procedure</b>	<b>Revised Procedure</b>
	<p>provide information and/or attend its meetings/hearings;</p> <p>(b) determine whether a complaint is substantiated;</p> <p>(c) make a report on substantiated complaint, which may include a recommendation on sanction of the Member under complaint (<i>paragraphs (6) to (12)</i>)</p>	
(g) <i>Information to consider at first meeting of the Preliminary Consideration Stage</i>	Information contained in the complaint ( <i>paragraph (7)(a)</i> )	Information contained in the complaint and readily available information such as media reports ( <i>paragraphs 7(a) and (c)</i> )
(h) <i>Factor(s) which CMI may consider in deciding whether to recommend sanction of the Member under complaint</i>	Whether the breach of relevant rule(s) is due to an honest mistake of the Member under complaint ( <i>paragraph (19)</i> )	Whether the breach of relevant rule(s) (a) is a deliberate act; and (b) involved any conflict of interests ( <i>paragraph 18</i> )
(i) <i>Report to the Council</i>	CMI may decide whether to report to the Council if the complaint is not substantiated ( <i>paragraph (20)</i> )	CMI should report to the Council after completion of investigation of a complaint ( <i>paragraph 16</i> )