

AM 12/01/19 (Pt 8)
2869 9480
2537 2449

By Fax (2136 8470) and By Post

27 April 2005

Mr Thomas Chan, IDS
Director of Corruption Prevention
Independent Commission Against Corruption
24 & 26 floors, Fairmont House
8 Cotton Tree Drive
Hong Kong

Dear

**ICAC's Review
on "Rules and Practices for the Reimbursement of Members' Operating Expenses"**

I forward further views expressed by members of the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement on ICAC's Report at its meeting held on 25 April 2005:

ICAC's recommendations	Members' views
(a) Intermingling of private and LegCo duties is undesirable; it is therefore recommended that a Member should not claim reimbursement for using his private employees for LegCo work. (Para. 41 of ICAC Report)	Members reiterate their strong reservations about this recommendation because there is a practical need for some Members (particularly those returned from functional constituencies) to intermingle the services of some of their staff, e.g. secretaries, on private and LegCo duties. Moreover, there are practical difficulties, in some circumstances, to separate their services on private and LegCo duties. In this connection, it will be unfair to preclude such Members from claiming a part of the salary for those staff whose duties are partially on LegCo duties. This should be allowed provided the percentage of their work relating to LegCo business is clearly spelt out in the claims.

	<p>(Please also refer to members' views expressed at the Subcommittee meeting held on 1 March 2005, which ICAC representatives attended.)</p>
<p>(b) Members should keep a log of their entertainment and travelling expenses (ETE) and, where practicable, retain receipts issued for such expenses. (Para. 44 of ICAC Report)</p>	<p>In accordance with the principles recommended by the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region, the existing guidelines on Operating Expenses Reimbursements (OER) (including ETE) operate on an honour system. ETE used to be granted on a partially accountable basis (50% accountable and 50% non-accountable). Since 1 July 1999, the provision for ETE has been fully non-accountable on the recommendation of the Independent Commission.</p> <p>Members consider that ICAC's recommendation is a retrograde step. Moreover, it will be administratively very cumbersome, if not impossible in some cases, to obtain receipts and log down every meal and trip.</p>
<p>(c) Only expenses that are individually identifiable, clearly separable from private purposes and wholly attributable to Council business may be claimed. (Para. 47 of ICAC Report)</p>	<p>Members generally support this recommendation. However, some express concern that a separate set of equipment, such as fax machines and photocopiers, may have to be acquired and placed in their small offices. Besides, sharing of a central telecommunication system will no longer be allowed according to ICAC's recommendation. All this causes much inconvenience to Members. Moreover, the extra costs involved will further strain the already inadequate provision of OER for Members.</p>

(d) LegCo should draw up a Code of Conduct for staff employed by its Members, and organize training/briefings for them. (Para. 50 of ICAC Report)	Members welcome ICAC's offer to assist the LegCo Secretariat in drawing up a Code of Conduct and organizing training/briefings for their staff.
(e) Others	Subject to their views expressed at the Subcommittee meetings held on 1 March and 25 April 2005, members generally support other recommendations.

I should be grateful if you would consider members' further views and advise how their concerns could be addressed to. A reply, together with any comments you may have on their views, before **9 May 2005** would be appreciated.

If you need further information on members' views, please let me know.

Yours sincerely

(Mrs Anna Lo)
Clerk to Subcommittee

c.c. Chairman of the Subcommittee

Our Ref. : (18) in CPD/LEGCO/1/1
Your Ref.: AM 12/01/19(Pt 8)
Tel. : 2826 3181

9 May 2005

Mrs. Anna Lo
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear

**ICAC's Review on
"Rules and Practices for the Reimbursement of Members' Operating Expenses"**

Thank you for your letter of 27 April 2005 advising us the Subcommittee Members' views on ICAC's recommendations in respect of the above review.

We are pleased to note that Members have in general accepted the report's recommendations, except for the few issues as highlighted in your letter. Before we address the concerns expressed by some Members over these outstanding issues, perhaps it would be useful for us to share with Members our thinking and rationale behind these recommendations.

Our review was undertaken against a backdrop of allegations and public concerns that LegCo funds could be misused for possible personal gain. Hence the objective of the review is to assist LegCo to put in place a credible reimbursement mechanism that would inspire public confidence.

Given this paramount consideration, we feel that a clear delineation of LegCo resources viz-a-viz Members' private resources would be the best way to demonstrate that Members spent all the reimbursed amounts solely on activities related to their LegCo duties. As we stated in our report, intermingling of these resources could easily give rise to allegations that a Member has used public funds to subsidise his private business. This consideration underscores the basis of our recommendations.

We appreciate that such an approach in having separate staff and equipment for LegCo and private operations may cause Members some initial inconvenience and extra costs. However, we believe that this is a small price worth paying in order to maintain LegCo's long-term credibility, free from perception or allegations of financial impropriety (which often could arise from misunderstanding) in the reimbursement procedures. Hopefully the initial inconvenience would be short-lived as Members get used to the new arrangements, and the extra costs minimal.

As regards Entertainment and Travelling Expenses, the key point of our recommendation is that LegCo should review the whole arrangement for such reimbursement, i.e. whether the expenses should continue to be on a reimbursement basis (in which case it is accountable) or whether the expenses should be made non-accountable in the form of a lump sum allowance, or as part of a Member's remuneration. If LegCo decides to continue with the present reimbursement mode, we would encourage Members, as we said in our report, to retain receipts as far as practicable or at least keep a log of the expenses for their own protection in the event of an allegation that these claims are fraudulent in nature. We understand that at present Members and their assistants do keep a record of the expenses in order to calculate the total amount of claim each month. Therefore our recommendation to keep receipts or a log should not give rise to extra administrative work. We also understand that this is a common practice in the public sector.

We accept that ultimately it is LegCo's decision as to whether it should adopt all or some of ICAC's recommendations and devise alternative proposals which will satisfy public expectations. The ICAC will be glad to offer further advice on any alternative arrangements.

We hope Members will find our above comments useful.

Yours sincerely,

(Thomas Chan)
Director of Corruption Prevention
Independent Commission Against Corruption

AM 12/01/19 (Pt 8)
2869 9480
2537 2449

By Fax (2136 8470) and By Post

18 May 2005

Mr Thomas Chan, IDS
Director of Corruption Prevention
Independent Commission Against Corruption
24 & 26 floors, Fairmont House
8 Cotton Tree Drive
Hong Kong

Dear

**ICAC's Review on
"Rules and Practices for the Reimbursement of
Members' Operating Expenses"**

Spoken Mr Thomas Chan/the undersigned.

Thank you for your letter of 9 May 2005 addressing to the concerns, expressed by some members of the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement, about some recommendations in your Review.

I understand that Hon Patrick Lau, the Chairman of the Subcommittee, has discussed your reply with you elaborating Members' difficulties in adopting some of your recommendations, particularly those in respect of sharing office premises and employees between Members' private business and LegCo work. He has reiterated to you that the Independent Commission on Remuneration for Members of the Executive Council and the Legislature of the Hong Kong Special Administrative Region has always held the view that LegCo membership is not a job, but a form of service to the public. There is hence no restriction on LegCo Members taking up full time employment alongside their LegCo duties. The Subcommittee considers it impracticable and unreasonable not to allow a Member to claim reimbursement, on a proportionate basis, for using his private employees or office/equipment for LegCo work.

I am instructed by Hon Patrick Lau, who is presently out of town, to write to request you to consider some alternative arrangements which are acceptable both to Members and the public.

I understand that it may take a bit of time for you to work out the alternative arrangements, but I would appreciate your reply, in Chinese and English, as soon as possible. For your information, the next meeting of the Subcommittee is scheduled to be held on 2 June 2005; and the Subcommittee would like to submit its report on your Review to the House Committee before the end of this session in July.

With best regards,

Yours sincerely

(Mrs Anna Lo)
Clerk to Subcommittee

c.c. Hon Patrick Lau Sau-shing, SBS, JP, Chairman of the Subcommittee

By Fax (2537 2449) and Post

Our Ref. : (20) in CPD/LEGCO/1/1
Your Ref. : AM 12/01/19 (Pt.8)
Tel. No. : 2826 3181

26 May, 2005

Mrs. Anna Lo
Clerk to Subcommittee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear

**ICAC's Review on
"Rules and Practices for the Reimbursement of
Members' Operating Expenses"**

Thank you for your letter of 18 May 2005.

As we advised previously, our review seeks to enhance the credibility of the reimbursement procedures by minimizing the possibility of allegations or any perception of impropriety. Our view is that this can best be achieved by having Members' resources (including staffing) for LegCo work and private business clearly separated, and separately accounted for. We note Members' concern that this may cause practical difficulty and inconvenience as they see merits and benefits in using their private business employees for LegCo work in respect of which the remuneration should be reimbursed.

In considering any alternative arrangements to our original recommendation, increased transparency and accountability would be the key for any revised reimbursement procedures to gain public confidence. In this regard, the Subcommittee may wish to consider requiring a Member to :

/(a)

- (a) declare in the employment contract whether the staff member he proposes to hire is also in his private employ and the capacity in which the staff member is to be employed;
- (b) detail the duties involved and, if the staff member is also employed in the Member's private business, the percentage of work that is related to his LegCo business;
- (c) make available a copy of the employment contract for public inspection (personal identifiers and data may be blocked out if necessary); and
- (d) certify on the monthly reimbursement claim form that the staff member has performed the duties as detailed in the employment contract.

We hope the above suggestions will assist Members in considering any alternative proposals that would enhance transparency and accountability in the sharing of LegCo and private resources.

Yours sincerely,

(Thomas Chan)
Director of Corruption Prevention
Independent Commission Against Corruption