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Clerk to the Panel on Constitutional Affairs
Legislative Council
3rd Floor, Citibank Tower
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Hong Kong

(Attn: Mrs Percy Ma)

Dear Mrs Ma,

**Application of Certain Provisions of
the Prevention of Bribery Ordinance (POBO) (Cap. 201)
to the Chief Executive (CE)**

Thank you for your letters of 1 and 4 June 2001. Our response to the issues raised in your letters is as follows :

- (a) The Elections (Corrupt and Illegal Practices) Ordinance (ECICO) is specifically aimed at election offences. One type of corruption offence, specifically targeted in relation to an election, is where an advantage is offered or solicited in exchange for an elector voting for a particular candidate (Section 11). "Advantage" is defined in the ECICO in a similar broad and inclusive manner as it is defined under the POBO. The meaning includes "the exercise of or forbearance from exercising a right or power", "the performance of or forbearance from performing a duty", and "any favour" or "other service". The advantage need not be for the direct benefit of the person voting for the offence to apply. The offence will be applicable if the advantage is "for the benefit of another person" (Section 11(3)(b) and (c)). To that extent the scenario set out in item (a) of your letter of 4 June would be caught by the ECICO.
- (b) The corruption offences under the ECICO apply to conduct engaged in before, during or after the "election period". The election period is defined as beginning on the nomination day, so conduct before nomination could be caught. The offences under Sections 7, 8 and 9

in relation to bribery of candidates, specifically cover prospective candidates. For example, an attempt to bribe a person to stand as a candidate or not to stand as a candidate would be caught (Section 7(1)(a)(i)). As would bribery to a person to influence a third party to stand or not to stand (Section 7(1)(c)). The CE is given no special status and these offences would apply to him as they apply to any other individual.

- (c) As the Administration has explained earlier, the application of provisions of the POBO to the CE should be considered separately from the CE election. The ECICO provides comprehensive safeguards to prevent corrupt and illegal conducts relating to the CE election. The CE Election Bill contains necessary technical amendments to the ECICO to ensure that its provisions will be implemented effectively in the context of the CE election. Members may therefore rest assured that the ECICO provides sufficient safeguards to ensure that any corrupt conduct of an incumbent CE seeking re-election will be liable to investigation and prosecution.
- (d) As regards the application of certain provisions of the POBO to the CE, we have made clear at the Panel meeting on 7 May 2001 that the CE is willing to be subject to the general standard of bribery prevention as required of government officers under the POBO. In view of the unique constitutional position of the CE, we are working on a viable option that seeks to set out in separate legislative provisions a framework of control making reference to that being applied to government officers under the POBO for application to the CE. We shall consult the Panel once we have worked out the necessary legislative proposal. In the meantime, the CE is not above the law and will continue to be subject to the common law offence of bribery and the ECICO in respect of corrupt act and illegal practices relating to the CE election.

Yours sincerely,

(Maggie WONG)
for Director of Administration