

Legislative Council Panel on Constitutional Affairs

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

Line-to-take

- At the meeting of the Legislative Council (LegCo) Panel on Constitutional Affairs (the Panel) on 15 May 2000, Members of the Panel and the Legal Adviser of LegCo suggested that the Administration should consider the codification of the common law offence concerning the bribery of, and the acceptance of bribes by, public officers (the common law offence of bribery).
- As Members will appreciate, Article 8 of the Basic Law specifically provides for the preservation of laws previously in force in Hong Kong (except for any that contravene the Basic Law), and these laws are expressed to include, inter alia, the common law. Thus, the common law continues to co-exist with and supplement those laws in our statute book.
- As a matter of fact, apart from the common law offence of bribery, there exists a considerable number of offences in the common law which are not codified (e.g. kidnapping, assault, murder, manslaughter, perverting the course of public justice, just to name a few). While the existence of a common law offence does not, of course, prevent the creation of a statutory offence, we would only do so when there is a proven need, say, when there are proven problems regarding the investigation and prosecution in respect of such offence. Codification would not be appropriate unless there were definite benefits to be derived from it and it was clear that these benefits outweigh any disadvantages that might flow from abolition of the common

law offence. This is also the practice in many other common law jurisdictions, and we see no reason for us to depart from this arrangement.

- Notwithstanding the aforementioned, the Administration is considering the question of codification of the common law offence of bribery in Hong Kong. We would need more time to study the scope and application of the common law offence before we could revert to the Panel with our stance regarding the question of codification of the offence. In particular, we would need to examine the relationship between the common law offence and the POBO, which is a separate set of statutory law on matters regarding corruption and bribery co-existing with the common law offence. This is a complicated and delicate issue. Codification implies abolition of the common law offence and we would need to be satisfied that such a course of action would not have any adverse consequences on the Government's effort to eradicate corruption. Codification, if it is to occur, must be done in such a way that positive benefits are derived from it and that these benefits clearly outweigh any disadvantages that might result from the abolition of the offence.
- As far as the CE is concerned, he already falls within the meaning of "public officer" under the common law and would be liable to prosecution if he accepts a bribe even without any amendment to the POBO. Also, we have already agreed to consider the creation of a new provision applicable to the CE which will be in line with the spirit of the existing section 10 of the POBO concerning the possession of unexplained property which is currently applicable to "Government officers", and yet will take into account the unique constitutional position of the CE.