

立法會
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**Paper for the House Committee meeting
on 25 January 2002**

**Report of the Panel on Constitutional Affairs concerning
application of certain provisions of the
Prevention of Bribery Ordinance to the Chief Executive**

Purpose

This paper reports on the dissatisfaction of the Panel on Constitutional Affairs (the Panel) with the time taken by the Administration in introducing legislative proposals for applying certain provisions of the Prevention of Bribery Ordinance (POBO) to the Chief Executive (CE).

Background

2. The main points of members' discussions concerning the issue since the 1998-1999 legislative session are summarised in paragraphs 3 - 10.

1998-1999 legislative session

3. As a follow up to a written question raised by Hon Emily LAU at the Council meeting on 13 January 1999 on whether CE was subject to the provisions of POBO, the Panel first discussed the issue on 9 February 1999. The Administration agreed to review POBO taking into account members' views.

1999-2000 legislative session

4. The issue was discussed at three meetings of the Panel held in October, November 1999 and May 2000. The Administration advised that CE had indicated that he was happy to be bound by POBO. However, the Administration had to consider how that could be given effect, given the construction of POBO and CE's special constitutional position. The Administration was of the view that it would be difficult to fit the Hong Kong Special Administrative Region (HKSAR) Government and CE into the structure of POBO, given that the relationship between the HKSAR Government and CE did not constitute a principal-agent relationship.

5. In response to the suggestion of members, the Administration had considered the possibility of deeming CE to be a "government officer" or "public servant" for the purpose of POBO so that the relevant sections of the Ordinance that were applicable to "government officers" or "public servants" would apply to him. However, this option was considered not viable on the basis of legal advice. The Administration explained to the Panel that legal advice was that CE might fall within the meaning of "public officer" under the common law and would be liable to prosecution if he accepted a bribe even without amendment to POBO. The Administration therefore considered that the creation of a new offence in POBO applicable to CE would suffice. The new offence would be in line with the spirit of the existing section 10 of POBO concerning the possession of unexplained property which was currently applicable to "government officers".

6. However, members considered that the common law offence of bribery was unclear and not couched in statutory terms. They requested the Administration to consider codifying the offence by way of enactment, so that CE would be subject to the same regulatory and legal framework applicable to government officers and public servants under POBO.

2000-2001 legislative session

7. The Administration informed the Panel at its meeting on 7 May 2001 that it came to a view that the proposal for codification of the common law offence of bribery might bring about more problems than it intended to resolve. The Administration advised that separate legislative provisions would be created to set out the bribery offences for application to CE, making reference to the existing framework of control as applicable to government officers under POBO, including section 10 of the Ordinance. The proposal would address CE's unique constitutional position and the fact that he was not a "government officer" or "public servant" as defined in POBO.

8. Members were of the strong view that the Administration should introduce the legislative proposal as soon as possible so that the regulatory and legal framework could apply to the CE election to be held in March 2002. While the Administration noted members' request, it was not in a position to confirm the specific legislative timetable. However, the Administration assured members that the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) had provided comprehensive safeguards to prevent corruption and other illegal activities in elections. An incumbent CE seeking re-election was subject to the provisions of the Ordinance.

9. At the request of the Panel, the Chairman of the House Committee raised the matter with the Chief Secretary for Administration on 26 June 2001. The Director of Administration subsequently responded in writing advising that the Administration would proceed with the exercise with priority and further consult

the Panel once a proposal regarding separate legislative provisions applicable to CE had been worked out.

2001-2002 legislative session

10. At its meeting on 21 January 2002, the Panel was informed that the Administration was still in the process of considering how the issues identified could be resolved and given effect. As regards the legislative timetable, the Administration agreed to introduce the legislative proposal, through amendments to POBO or other legislative vehicles, into the Legislative Council (LegCo) in the next legislative session.

Recommendation

11. While a member considers that the Administration's proposed legislative timetable acceptable, the majority of the members of the Panel are dissatisfied with the situation. They point out that the issue has dragged on for more than three years since it was first raised by the Panel. They are adamant that the legislative proposal should be introduced into LegCo as soon as possible so that it will come into effect when the second term CE is in office. These members suggest that the matter should be brought to the attention of the House Committee to seek its support for the matter to be raised with the Chief Secretary for Administration.

Advice sought

12. Members are invited to support the recommendation in paragraph 11 above.

Council Business Division 2
Legislative Council Secretariat
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