

**Extract of minutes of meeting on Constitutional Affairs Panel
held on 21 January 2002**

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V. Application of certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive
(LC Paper Nos. CB(2)921/01-02(04) and (05))

40. Deputy Director of Administration (DDA) briefed members on the Administration's position on the proposal to extend the general standard of bribery prevention applicable to government officers under the Prevention of Bribery Ordinance (POBO) for application to the CE. She advised that the Administration had examined the control framework of bribery prevention under POBO, which included all those provisions applicable to public servants and government officers and the two more stringent provisions that applied exclusively to government officers (sections 3 and 10 of the POBO). In addition, the operation of the offence provisions currently applicable to public servants (sections 4(2) and 4(3) and section 5(2) of the POBO) in relation to their applicability to the CE had to be examined in detail. The views of the Administration were set out in the Administration's paper (LC Paper No. CB(2)921/01-02(05)).

41. DDA further advised that in considering a possible arrangement for applying the bribery prevention provisions to CE, it was necessary to take into account the CE's unique constitutional position and the provisions under the BL. It was also necessary to reconcile the CE's status under the POBO, i.e. the CE was neither a government officer nor a public servant as defined in POBO. The Administration was considering how best the problems identified might be resolved. Subject to the final form of the legislative provisions, it would consider whether the legislative provisions for exclusive application to CE should be given effect through amendments to the POBO or other legislative vehicles.

42. Mr Howard YOUNG noted that according to the Administration, administrative arrangement was in place to ensure transparency and accountability in relation to the acceptance and disposal of gifts presented to the CE. The current arrangement was that CE would not accept gifts for personal retention unless the incumbent had paid for them at market value. He suggested that the Administration might consider codifying such arrangement in enactment. DDA responded that the Administration would consider the proposal.

43. Mr CHEUNG Man-kwong said that CE had expressed himself clearly in 1999 that he was happy to be bound by the bribery prevention provisions of POBO. Mr CHEUNG said that it was a very undesirable situation that several years had passed and the relevant legislative amendments had yet to be drafted and introduced into LegCo for consideration. He further pointed out that as advised by the Administration in its paper, if the decision was taken to implement the arrangement for application to the CE in the form of an amendment Bill to the POBO, the Administration might take the opportunity to effect other amendments to the Ordinance. He cautioned that such approach might result in a further delay of introducing the relevant amendments. He considered that the Administration should first introduce those legislative provisions which would apply exclusively to CE as soon as possible so that the control framework could come into operation when the second term CE assumed office.

44. DDA responded that in view of the complexities involved in the exercise as explained in the Administration's paper, the Administration would need more time to decide the best way forward to give effect to the new arrangement. She said that the Administration had no intention to defer the exercise. Subject to a final decision on whether the provisions should be implemented through amending the POBO or other legislative means and the completion of law drafting, the Administration would introduce the legislative provisions.

45. In response to members, DDA said that it was expected that the Administration would be able to introduce the legislative proposal in the next legislative session.

46. The majority of members were dissatisfied with the proposed legislative timetable. They stressed that the Administration should expedite the matter with a view to introducing the legislative proposal within the current legislative session so that it could come into effect when the second term CE assumed office. Members agreed that the Panel should make a report to the House Committee and to seek its support for the matter to be raised with the Chief Secretary for Administration.

Panel

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