

立法會
Legislative Council

LC Paper No. CB(2)2591/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PS/6/04

**Subcommittee on Application of Certain Provisions of the
Prevention of Bribery Ordinance to the Chief Executive**

**Minutes of the third meeting
held on Thursday, 21 July 2005 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon MA Lik, GBS, JP (Acting Chairman)
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Bernard CHAN, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Kwok-ying, MH
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon TONG Ka-wah, SC
- Members absent** : Dr Hon YEUNG Sum (Chairman)
Hon Albert HO Chun-yan
Hon CHEUNG Man-kwong
Hon Howard YOUNG, SBS, JP
- Public officers attending** : Ms CHANG King-yiu
Director of Administration

Mrs Susan MAK
Deputy Director of Administration (1)
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Watson CHAN
Head, Research and Library Services Division

Mrs Eleanor CHOW
Senior Council Secretary (2)4

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I. Election of Chairman of the meeting

As Dr YEUNG Sum, the Chairman, was out of town, members elected Mr MA Lik as Chairman of the meeting.

II. Meeting with the Administration

(LC Paper No. CB(2)2345/04-05(01) – Letter dated 12 July 2005 from the Chairman to the Chief Executive)

(LC Paper No. CB(2)2345/04-05(02) – Letter dated 19 July 2005 from the Director of Administration to the Chairman)

2. The Chairman advised members that at the last meeting, the Subcommittee agreed that the Chief Executive (CE) or the Chief Secretary for Administration (CS) should be invited to attend this meeting to give a clear policy indication as to whether CE should be subject to the standards of bribery prevention applicable to government servants under the Prevention of Bribery Ordinance (POBO), and whether this should be given effect through legislative means. The Administration had responded in its letter dated 19 July 2005 that neither CE nor CS was able to attend this meeting due to other commitments. The Administration was represented by the Director of Administration (D of Adm) and her Deputy Director.

3. D of Adm said that as explained in her letter, there were complex constitutional and legal issues involved in considering the legislative approach to subject CE to the same POBO provisions applicable to “prescribed officer” under POBO. Notwithstanding this, the Administration would conduct a comprehensive review of these issues and undertook to revert to the Subcommittee with a final decision in the new legislative session commencing October.

4. Ms Emily LAU expressed regret that both CE and CS could not attend the meeting and the Administration had yet to arrive at a decision on the issue of application of POBO to CE which had been dragging on for too long. She asked the Administration to clarify whether it could come up with a decision on the approach to be adopted to subject CE to the POBO provisions in early October,

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and whether the issue would be covered in CE's Policy Address to be delivered in October 2005 as suggested by her at the last meeting.

5. D of Adm said that she had already conveyed members' view about including the issue in the Policy Address to CE for consideration, and it was for CE to decide on the content of the Policy Address. The Administration would explain to the Subcommittee in October the position of its study of whether and how POBO provisions should apply to CE.

6. Ms Emily LAU said that the paper to be provided by the Administration to the Subcommittee in October 2005 should include information on the basis of the Administration's final decision, e.g. whether consideration had been given to overseas practices. In this regard, she referred D of Adm to the research outline proposed by the Research and Library Division (RLSD) of the Legislative Council (LegCo) Secretariat.

7. D of Adm said that in the past, the focus of the Administration's study was on the provisions of POBO, i.e. whether CE could fit into the structure of the existing provisions in POBO and whether such an approach was consistent with the Basic Law. She noted that the scope of the research outline proposed by RLSD covered bribery prevention and impeachment of the Head of Government in selected places. To facilitate discussion with the Subcommittee, the Administration would conduct research on similar subjects.

Admin

8. Mr Martin LEE said that at the last meeting, members asked whether the new CE could confirm that he would be happy to be bound by POBO, a position taken by his predecessor. Mr LEE asked about CE's response.

9. D of Adm said that she had reflected the views of members expressed at the last meeting to CE. On the instruction of CE, she had given a written reply to the Subcommittee. As regards CE's personal view on the application of POBO to CE, D of Adm reiterated that CE's response had been reflected fully in the Administration's written reply.

10. Ms Emily LAU asked whether the Administration had consulted the Mainland authorities on the issue. D of Adm responded that as the Administration had yet to come up with a final proposal on the issue, it was not in a position to consult the Mainland authorities. As to whether the Administration would consult the Mainland authorities in future, it would depend on the details of the proposal and its implications.

III. Proposed research outline on "Prevention of Corruption and Impeachment of Head of Government in Selected Places"

(LC Paper No. CB(2)2345/04-05(03) – Proposed research outline)

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11. Head of RLSD (H/RL) briefed members on the proposed research outline. He said that the research would be completed in November 2005.

12. Members endorsed the proposed research outline. On the proposed places to be studied, Mr Martin LEE asked about the reasons for selecting the United Kingdom (UK), the United States (US) and South Korea for study. Some members suggested that other places such as Singapore and France could be considered as well.

13. H/RL responded that given the limited time available for preparing the proposed research outline, RLSD had tentatively selected the three proposed countries. UK had been chosen because the tradition of impeachment had its origins in the law of England. US could provide useful information for reference because it had detailed legal and parliamentary rules governing the impeachment process. South Korea had recently invoked the impeachment process on its President. While Singapore could be considered, H/RL advised that based on past experience, it was difficult to get first hand information from its Government. H/RL added that as the information available in South Korea was limited, RLSD might consider replacing South Korea with other places.

14. In response to Ms Emily LAU, H/RL confirmed that in line with the usual practice, an informal meeting would be arranged for interested members to discuss and give views on the draft report before it was finalized and presented to the Subcommittee.

IV. Work plan of the Subcommittee

15. Mr TONG Ka-wah said that the Subcommittee should decide on its own work plan, so that work would continue even though the Administration was dragging its feet. Mr TONG suggested that the Subcommittee should examine the existing provisions of POBO with a view to identifying the offence provisions which should apply to CE. It should then consider whether application of these provisions to CE should be given effect through amendments to POBO. In the event that amendments to POBO were considered inappropriate, the Subcommittee should consider how the control framework of bribery prevention applicable to CE should be implemented, e.g. by enacting separate legislation or by developing constitutional conventions. Mr TONG further suggested that the Subcommittee should invite legal professional bodies, legal academia and other interested parties to give views on the issue.

16. The Chairman asked members to consider whether Mainland legal experts should be invited to give views on the issue. Mr TONG Ka-wah and Mr Martin LEE said that devising a control framework of bribery prevention applicable to CE was a matter within the autonomy of the Hong Kong Special Administrative Region. Under the principle of “one country, two systems”, it

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was inappropriate to invite views from the Mainland authorities. Mr TAM Yiu-chung said that while the views of Mainland legal experts might be useful, it was not easy to invite them to give views to LegCo. He suggested that the matter could be considered at a later stage if necessary. Ms Emily LAU said that by convention, invitation for public views and written submissions would be posted on the LegCo website, and interested parties were welcomed to give views to LegCo.

17. In response to members' enquiry, D of Adm confirmed that representatives of the Independent Commission Against Corruption and the Department of Justice would participate in the Subcommittee's deliberations in future.

18. Members had no objection to Mr TONG's suggestions. Ms Emily LAU requested Senior Assistant Legal Adviser 2 (SALA2) to prepare a paper to facilitate discussion of the Subcommittee. SALA2 said that whether POBO should apply to CE was not purely a matter of legal analysis, but involved policy judgement. Ms LAU said that as a matter of policy, CE should be subject to bribery prevention legislation. The crux of the matter was whether this should be achieved by amending POBO or enacting new legislation.

19. Mr TONG Ka-wah said that in his view, subjecting CE to bribery prevention legislation was a constitutional issue and not a policy issue. Article 47 of the Basic Law (BL 47) provided that CE must be a person of integrity and dedicated to his duties. A person of integrity should not engage in corrupt conduct. In order to implement BL 47, it was necessary to consider whether certain provisions of POBO could be applied to CE, and if not, whether amendments to POBO or introduction of a new piece of legislation were required. Mr TONG added that it was also necessary to consider the sanctions to be imposed for breach of bribery offences. For example, if a CE was subject to POBO and if he committed an offence under POBO, whether he should be prosecuted under POBO and subject to the impeachment procedure under BL 73(9), and in the case of the latter, whether separate legislative provisions were required.

20. Dr LIU Ming-wah concurred that CE should be subject to the same standards of bribery prevention applicable to government servants under POBO and it was a matter to decide on the legislative approach to be adopted.

21. The Chairman requested Mr TONG Ka-wah to prepare a paper on the subject to facilitate members' deliberation. Mr TONG said that he would do so if time allowed.

22. Ms Emily LAU suggested that given the complex nature of the issue, an internal meeting should be arranged at the end of September 2005 for members to discuss the paper prepared by SALA2, and the draft research report if

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available. The meeting to receive views from deputations could be held thereafter. Members agreed.

(Post-meeting note : An internal meeting has been scheduled for 28 September 2005 at 4:30 pm to discuss the paper prepared by Senior Assistant Legal Adviser 2 and the preliminary finding of the research report prepared by the Research and Library Services Division.)

23. The meeting ended at 9:20 am.

Council Business Division 2
Legislative Council Secretariat
27 September 2005