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12 May 2006
(By fax: 2509 9055)

Mrs Percy Ma
Clerk to LegCo Panel on Constitutional Affairs
Legislative Council
3/F Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Mrs Ma,

**Legislative Council Panel on Constitutional Affairs
Follow-up to meeting on 21 April 2006**

**Loans Extended by Political Parties
to Candidates for the Purpose of Election**

At the Panel meeting held on 21 April 2006, a Member referred to a District Court judgment relating to loans extended by a political party to its members in elections, and expressed concern about the implications of the judgment. The background of the case and our views are set out in the ensuing paragraphs.

In 2000, a political party launched civil action to recover loans advanced to two ex-members for the purpose of election. In November 2001, a District Court judge handed down the judgment, ruling that the loans were in contravention of section 8A of the Corrupt and Illegal Practices Ordinance ("CIPO")(Cap. 288).

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Section 8A(1)(a) of the CIPO provides that "no person shall directly or indirectly by himself or by any other person on his behalf bribe or intimidate another person to stand as a candidate at an election". Under section 8A(2) of the CIPO, a person bribes another if he does any of those activities referred to in section 5 in relation to a person standing as a candidate. The Judge considered that "the activities referred to in section 5 were so widely defined as including the making of any gift or loan". It was ruled that the loans were illegal under section 8A of the CIPO and hence not recoverable.

The District Court judgment was subsequently appealed and the Court of Appeal handed down its judgment in April 2004. The Court of Appeal noted that the District Court judge had applied an obsolete version of section 5 of the CIPO when considering the case. The old version referred to a range of activities, including the making of any gift or loan. However, the Corrupt and Illegal Practices (Amendment) Ordinance (Ordinance No. 54 of 1994) had amended the section such that it would be illegal to engage in such activities *only if there was no lawful authority or reasonable excuse*.

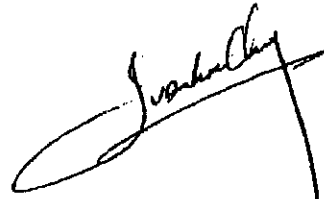
The Court of Appeal considered that "whether there is lawful authority or reasonable excuse depends on the entire background of the case". It doubted the correctness of the conclusion reached by the District Court judge on the legal issues concerned. It set aside the orders of the trial judge and remitted the cases to the District Court for a re-trial. The Administration is not aware that a re-trial has taken place. Since the District Court judgment was overruled by the Court of Appeal, the ruling of the Court of Appeal prevails.

In any case, the District Court judgment referred to in the second and third paragraphs above was based on the CIPO, which has since been repealed in its entirety and replaced by a new piece of legislation, viz the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") (Cap. 554) in 2000. Under section 7 of the ECICO, a person engages in corrupt conduct at an election if the person *corruptly* offers an advantage to another person as an inducement or a reward for the other person to stand, or not to stand, as a candidate at the election. The meaning of "advantage" includes, inter alia, any valuable consideration, gift or loan but does not include an election donation if particulars of the donation are given on an election return that has been lodged with the appropriate authority (section 2 of the ECICO).

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The construction of section 7 of the ECICO is different from that of sections 5 and 8A of the repealed CIPO. The concept of "corruptly" was introduced in response to the Members' suggestion during scrutiny of the Bill to prevent innocent acts from being caught. With the introduction of this concept, in determining whether a person has engaged in corrupt conduct when offering an advantage to another person, the court needs to consider how and the circumstances under which the advantage is offered. The act of offering an advantage (e.g. a loan) *per se* does not amount to corrupt conduct. Section 7 of the ECICO will be contravened only if an advantage is offered corruptly as an inducement for or as a reward for someone standing or having stood as a candidate etc. at an election.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ivanhoe Chang', written over a large, stylized flourish that extends downwards and to the left.

(Ivanhoe Chang)

for Secretary for Constitutional Affairs

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