

*Prevention of Corruption and Impeachment of
Head of State/Government in the United Kingdom,
the United States and Korea*

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Executive Summary

1. This research studies the legal regulation for corruption control and impeachment of the head of state/government in the United Kingdom (UK), the United States (US) and the Republic of Korea (Korea).
2. Although all the heads of state/government of the three places studied hold unique constitutional status, they are subject to legal regulation for corruption control similar to other public officials. In the Hong Kong Special Administrative Region (HKSAR), there are only a handful of legal provisions in relation to corruption prevention of the Chief Executive (CE).
3. Since 1999, the Legislative Council of the HKSAR has expressed concern over the application of certain provisions of the *Prevention of Bribery Ordinance (PBO)* to CE. In October 2005, the Government announced that it was ready to put forward a proposal to apply certain provisions of *PBO* to CE.
4. In the UK, corruption charges are investigated by the police and prosecuted by the Crown Prosecution Service. There are no provisions for special counsel, grand juries or special commissions.
5. In the US, the Department of Justice has primary jurisdiction for investigation and prosecution of corruption charges against federal officials. In Korea, the criminal investigation and prosecution procedure for corruption charges against high-ranking public officials follows the general criminal procedure.
6. Both the US and Korea have a special mechanism to investigate executive misconduct. In the US, the Attorney General has the power to appoint an outside special counsel to conduct investigation when the prosecution by the Department of Justice would pose a conflict of interest. The National Assembly of Korea may pass a bill to appoint an independent counsel to investigate a corruption case.
7. In both the US and the UK, there are no legal provisions providing express immunity for the President or the Prime Minister. Under the *Korean Constitution*, the President is entitled to criminal immunity during his tenure of office except for insurrection or treason. In the HKSAR, the *Basic Law* does not provide any immunity for CE. In all of the three places studied, there are no legal provisions requiring prosecution agencies to advise the respective legislature of any credible information that may constitute grounds for an impeachment.
8. The tradition of impeachment has its origins in the laws of England. The impeachment process in the three places studied is similarly governed by their constitutions, parliamentary procedures and relevant statutes regulating the institutions concerned.

9. Under both the UK and the US systems, it is for the impeachment to be made in the lower house of the respective legislature and for the trial to be held in the upper house. In Korea, after the National Assembly has passed an impeachment motion, the motion is submitted to the Constitutional Court of Korea for a determination.
10. In the three places studied, the respective legislature has its own discretion with regard to the impeachment procedure. Conviction under the old English impeachment system could result in punishment by imprisonment, fine or even death. In the US and Korea, conviction may only lead to the removal of office of the accused. The US Senate may impose an additional punishment to prohibit the accused from holding an office of public trust again. Any person who is removed by impeachment in Korea is prohibited to be a public official for the next five years.
11. In all of the three places studied, the particular kind of misconduct falling within the boundary of impeachable offence is a contentious issue. Historically, the English impeachment was used for "high crimes and misdemeanors" beyond the reach of law, or where no other authority in the state could prosecute. The US President may be impeached in cases involving treason, bribery, and "high crimes and misdemeanors". In Korea, the President may be impeached if he has violated the Constitution or other laws in the performance of official duties.

Prevention of Corruption and Impeachment of Head of State/Government in the United Kingdom, the United States and Korea

Chapter 1 – Introduction

1.1 Background

1.1.1 At its meeting on 11 July 2005, the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive requested the Research and Library Services Division (RLSD) to conduct a research on legal regulation for corruption control and impeachment of the head of state/government in selected places.

1.2 Scope of research

1.2.1 The research first examines legal regulation for corruption control of the head of state/government in selected places, focusing on the following aspects:

- (a) relevant legal regulation; and
- (b) investigation and prosecution procedure.

1.2.2 Secondly, the research studies the legal procedure for impeachment of the head of state/government in the selected places. In particular, the research looks at:

- (a) relevant legal regulation;
- (b) parliamentary rules and procedure; and
- (c) scope of impeachable offences

1.2.3 This research studies the experiences in the United Kingdom (UK), the United States (US) and the Republic of Korea (Korea).

1.2.4 The UK is chosen because the tradition of impeachment has its origins in the laws of England, where the procedure was last applied in 1806. In 2004, there were discussions for possible impeachment of the Prime Minister in the House of Commons. The US is chosen because its impeachment process is regulated by detailed legal and parliamentary rules. Korea is chosen because it has recently experienced the impeachment of its President by the National Assembly and a subsequent restoration of the status quo by the Constitutional Court of Korea.

1.3 Methodology

1.3.1 This study adopts a desk research method, which involves Internet research, literature review, documentation analysis and correspondence with relevant authorities.

Chapter 2 – The United Kingdom

2.1 Legal regulation for corruption control

Relevant legal regulation

2.1.1 The Prime Minister is the head of government of the United Kingdom (UK). There is no specific law or regulation for corruption control of the Prime Minister¹. Corruption is governed by both the common and statute laws, which essentially cover the Prime Minister.

2.1.2 Bribery and attempted bribery are common law offences punishable by imprisonment or a fine at large, or both.² The most widely cited definition of the common law offence of bribery is:

*"Bribery is the receiving or offering of any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity."*³

2.1.3 The definition of a public officer under the common law offence of bribery is:

*"an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public."*⁴

2.1.4 The *Anti-Terrorism and Security Act 2001* extends the common law offence of bribery so that *"it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and [the act] is carried out in a place outside the United Kingdom."*

2.1.5 The person who receives the bribe could also be charged as the common law offence of misfeasance. It is committed by a public officer acting as such who wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public trust in the office holder, without reasonable excuse or justification.

¹ The Office of the Prime Minister in the UK is the creation of the constitutional convention, and the role and powers of the Prime Minister depend mainly on convention and political circumstances. The Office is barely acknowledged in legislation.

² The offence has evolved over several centuries and is often described in terms of a number of individual offences rather than a single offence. See Lanham (1987) pp. 92-3.

³ Russell (1964) p. 381.

⁴ R. v. Whitaker [1914] 3 K.B. 1283 at p. 1296.

2.1.6 In the UK, the principal statutes dealing with corruption are (1) the *Public Bodies Corrupt Practices Act 1889*; (2) the *Prevention of Corruption Act 1906*; and (3) the *Prevention of Corruption Act 1916*.

2.1.7 Section 1(1) of the *Public Bodies Corrupt Practices Act 1889* makes it an offence for any person alone, or in conjunction with others, to corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned. Section 1(2) of the Act creates a similar offence to that of section 1(1), in respect of anyone who gives the bribe.

2.1.8 Section 1 of the *Prevention of Corruption Act 1906* creates offences relating to corrupt transactions by and with agents in relation to their principal's activities. Crown servants are within the definition of agents of this Act.

2.1.9 In relation to offences created by the *Public Bodies Corrupt Practices Act 1889* and the *Prevention of Corruption Act 1906*, the burden of proof is shifted on to the defendant to show (on the balance of probabilities) that the money, gift, or other consideration is not received corruptly. This shift in burden of proof is provided by section 2 of the *Prevention of Corruption Act 1916*.

2.1.10 In 1998, the Law Commission published a report entitled *Legislating the Criminal Code: Corruption*. The main conclusions of the report were (1) the lack of consistency and comprehensiveness of the existing law on corruption, (2) the lack of a statutory definition of the term "corruptly", which was open to different interpretations, and (3) the dependence of the existing law on the distinction between public and non-public bodies.⁵ The report called for a modern statute to replace all or parts of the existing relevant legal provisions on corruption and to incorporate the common law offence of bribery.

2.1.11 In March 2003, a draft bill to reform the law of bribery and corruption was published by the Home Office⁶. A Joint Committee of both Houses was set up to consider the draft bill. The Committee was of the opinion that the language of the bill was too complex and the definition of corrupt conduct was not sufficiently clear. The Committee also concluded that the draft bill's clause on the waiving of parliamentary privilege required reworking.⁷ The bill was withdrawn and has not been re-introduced.

⁵ The Law Commission (1998).

⁶ The Home Office (2003).

⁷ For details, see Winstone (2003).

2.1.12 There is no legal requirement for the Prime Minister to make financial disclosure. However, the Prime Minister, similar to other Ministers, is subject to conflict of interest regulation under the *Ministerial Code*⁸. As a Member of Parliament (MP), the Prime Minister is obliged to make financial declaration in the Register of Members' Interests. Starting from 2003, the Prime Minister has published a list of all gifts received by Ministers valued at more than £140 (HK\$1,736) on an annual basis.

2.1.13 As stated in the *Ministerial Code*, Ministers are bound by the provisions of Part V of the *Criminal Justice Act 1993* in relation to the use or transmission of unpublished price-sensitive information obtained by virtue of their Ministerial office.⁹

Investigation and prosecution procedure

2.1.14 In relation to the investigation and prosecution procedure of corruption charges, they are being treated the same as in any criminal offence. It would be for the police to investigate and charge the person, and the Crown Prosecution Service to decide whether to prosecute. As to offences under the *Public Bodies Corrupt Practices Act 1889* and the *Prevention of Corruption Act 1906*, they require the consent of the Attorney General to prosecute.

2.1.15 In the UK criminal justice system, there are no provisions for special counsel, grand juries or special commissions. The Prime Minister is subject to the law in the same manner as any member of the public.

2.2 Legal procedure for impeachment

Background

2.2.1 There have been about seventy impeachments during the whole course of English history. Impeachment was relatively common in the following two periods; firstly in the fourteenth century under the Tudor dynasty, and secondly in the seventeenth and eighteenth centuries. The last impeachment occurred in 1806 when Lord Melvill was charged by the House of Commons but acquitted of misappropriating official funds.

⁸ See Cabinet Office (2005) section 5. The *Ministerial Code* is issued by the Prime Minister for regulating conduct of Ministers.

⁹ Cabinet Office (2005) Article 5.13.

2.2.2 In the past, impeachments were usually directed against Ministers of the Crown. With the development of the doctrine of collective responsibility¹⁰ and the practice of confidence motions¹¹, the impeachment process had gradually fallen into disuse in modern times.¹²

2.2.3 The 1967 Select Committee on Parliamentary Privilege of the House of Commons recommended that the right to impeach should be formally abandoned and legislation should be introduced for that purpose. However, no such legislation was introduced. A Joint Committee on Parliamentary Privilege in 1999 stated that "[t]he circumstances in which impeachment has taken place are now so remote from the present that the procedure may be considered obsolete."¹³ Although the power to impeach is now of historical rather than current interest in the UK, this power has not been formally abolished.¹⁴

2.2.4 In the English system, it is for the impeachment to be made in the House of Commons and for the trial to be held in the House of Lords. As noted by an early edition of *Erskine May Parliamentary Practice*, "the Commons, as a great representative inquest of the nation, first find the crime and then, as prosecutors, support their charge before the Lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate upon the charge preferred."¹⁵ Since impeachment has not taken place in the UK after 1806, details of its procedure are not available in current publications. Therefore, the following discussion about its procedure is inevitably brief.

Initiation

2.2.5 Under the ancient procedure of impeachment, all persons may be prosecuted and tried by the two Houses.¹⁶ The House of Commons determines when an impeachment should be instituted. The process starts with an MP charging the accused with high treason, or certain other crimes and misdemeanors. After supporting his charge with evidence, the MP moves for impeachment.

¹⁰ Collective responsibility is a constitutional convention requiring members of the Cabinet to publicly support all governmental decisions made in the Cabinet, even if they privately disagree with them. For further discussion, see Gay & Powell (2004).

¹¹ See Powell (2004).

¹² Certain Members of Parliament considered tabling a motion for impeachment of the Prime Minister, Tony Blair, over his record in the Iraq war in 2004. Nevertheless, the motion did not materialise. For details, see Price (2004).

¹³ Joint Committee on Parliamentary Privilege, First Report, session 1998-99, paragraph 16.

¹⁴ *Erskine May Parliamentary Practice* (2004) p. 73.

¹⁵ *Erskine May Parliamentary Practice* (1976) pp. 65-6.

¹⁶ Joint Committee on Parliamentary Privilege, First Report, session 1998-99, footnote 71.

Investigation

2.2.6 If the accusation is found, on examination by the House, to have sufficient grounds to justify further proceedings, the motion is put to the House.

Voting on impeachment

2.2.7 If the motion is agreed by the House, one or more MPs are ordered by the House of Commons to go to the bar of the House of Lords. There, in the name of the House of Commons and of all the commons of the UK, the MPs impeach the accused person. A committee of the House of Commons is then appointed to draw up articles of impeachment which are debated. When the House reaches an agreement on the articles, they are engrossed and delivered to the House of Lords.

Impeachment trial

2.2.8 After receiving the impeachment articles, the House of Lords may ask the accused for written answers. The House of Lords communicates the answers received to the House of Commons. The House of Commons may send a reply to the House of Lords.

2.2.9 The trial is held at the House of Lords, with the Lord Chancellor presiding¹⁷. The House of Commons appoints 'managers' (prosecutors) for the trial to prepare the evidence; but it is the House of Lords that summons witnesses. The accused may call witnesses and present evidence, and is entitled to defence by counsel. If found guilty, judgment is not pronounced unless and until demanded by the House of Commons (which may, at this stage, pardon the accused).

2.2.10 An impeachment may continue from one parliamentary session to another session, or over dissolution. Conviction under the old English impeachment system could result in punishment by imprisonment, fine or even death. Under the *Act of Settlement*, a royal pardon cannot excuse the accused from trial, but a pardon may relieve a convicted person.

¹⁷ If the impeachment relates to a peer accused of high treason, the Lord High Steward will preside.

Impeachable offences

2.2.11 By the law of Parliament, all persons may be impeached for any crimes although impeachments have generally been reserved for extraordinary crimes and extraordinary offenders.¹⁸ Historically, impeachment by the House of Commons was used for "high crimes and misdemeanors" beyond the reach of the law, or where no other authority in the state could prosecute.

2.2.12 In previous impeachment cases, "high crimes and misdemeanors" carried the meanings of misapplication of funds, abuse of official power, neglect of duty, corruption and contempt of Parliament's prerogatives.¹⁹

¹⁸ *Erskine May Parliamentary Practice* (1976) p. 66.

¹⁹ See Berger (1974) Chapter II.

Chapter 3 – The United States

3.1 Legal regulation for corruption control

Relevant legal regulation

3.1.1 The President of the United States (US) is both the head of state and the head of government of the country. The *US Constitution* prohibits the President from taking advantage of his position to realize economic benefits, at least during his term in office.²⁰ The Constitution also prevents federal officials from accepting "*any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.*"²¹ In particular, bribery is an impeachable offence for the President.

3.1.2 Bribery of public officials is specifically prohibited in criminal laws. It is punishable by imprisonment or a fine, or both. Title 18, Section 201(b)(2) of the *United States Code* makes it an offence for a public official or person to be selected to a public office, "*directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for: (A) being influenced in the performance of any official act; (B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or (C) being induced to do or omit to do any act in violation of the official duty of such official or person.*" Title 18, Section 201(b)(1) of the Code makes it an offence for anyone who offers the bribe.

3.1.3 The *Ethics on Government Act of 1978* requires the President and other senior public officials to make an annual public financial disclosure.²² Such requirement is extended to their spouses and dependent children.

²⁰ Article II, Section I, Clause 7 of the *US Constitution* provides that "[t]he President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them."

²¹ The *US Constitution*, Article I, Section 9, Clause 8.

²² In general, those persons who make the public financial disclosure must provide information about: their assets and the income derived from them; the income that they earned for performing services; the purchase, sale and exchange of certain assets; gifts and reimbursements that they received; certain of their liabilities; their agreements for future employment, the positions that they hold outside the government; and the identities of those who recently paid compensation over US\$5,000 (HK\$39,000) for their personal services.

Investigation and prosecution procedure

3.1.4 Although the *US Constitution* does not provide express immunity for the President, the courts have developed a doctrine of official immunity for the President. The President is entitled to absolute immunity in civil suits regarding all of his official acts²³. According to a 1997 Supreme Court ruling, the President is not entitled to immunity from civil liability for unofficial acts: acts committed in a personal capacity rather than as President.²⁴

3.1.5 There are various legal opinions regarding criminal indictment of an incumbent President. It is an unsettled question whether a sitting President may be the subject of a criminal trial or whether impeachment proceedings must precede any criminal proceedings with respect to a President.²⁵

3.1.6 The Department of Justice has primary jurisdiction for investigation and prosecution of corruption charges against federal officials involving potential violations of federal law. The Attorney General is the head of the Department of Justice, who is appointed by the President with the consent of the Senate.

3.1.7 Prior to 1999, the *Ethics on Government Act of 1978* authorised the Attorney General to make an arrangement to appoint a special prosecutor to perform all investigative and prosecutorial functions of the Department of Justice if he believed that any federal criminal law had been violated by the President or other senior public officials.²⁶ A special prosecutor would be appointed by a three-judge panel, which also defined the jurisdiction of the special prosecutor. Only the Attorney General had the authority to remove the special prosecutor from office, but the law required notification of the three-judge panel and the Judiciary Committees in Congress.

3.1.8 Under the special prosecutor provisions in the *Ethics on Government Act of 1978*, the Attorney General's discretion was limited so that an investigation was mandated if information regarding possible violation of federal law was specific and if it involved the President or other senior public officials. The name of the "special prosecutor" was changed to "independent counsel" in 1983 when the provisions were revised.²⁷ When the independent counsel provisions expired in 1999, neither House of Congress passed a renewed legislation.

²³ Nixon v. Fitzgerald 457 U.S. 731 (1982).

²⁴ Clinton v. Jones 520 U. S. 681 (1997).

²⁵ See Bazan (2003), Freedman (1992) and Berger (1994).

²⁶ After President Nixon fired Archibald Cox from his job as the Watergate special prosecutor, there were suggestions that there ought to be a mechanism to investigate executive misconduct that was independent of the President and the Attorney General. The enactment of the *Ethics in Government Act* in 1978 was a response to these suggestions.

²⁷ There were changes in the independent counsel provisions in both 1983 and 1987, when they were reauthorised by Congress. See Johnson & Brickman (2001) chapter 4.

3.1.9 After the demise of the independent counsel law, the Department of Justice issued the special counsel regulations (General Powers of Special Counsel)²⁸ in 1999. The regulations create a new process for conducting independent investigations of executive misconduct under the auspices of the Department of Justice. Under the regulations, the Attorney General may appoint an outside special counsel to conduct a particular investigation when the prosecution by the Department of Justice would pose a conflict of interest and such appointment would be in the public interest.

3.1.10 The Attorney General may decide what constitutes a conflict of interest, whether an investigation is in the public interest, and when the appointment of a special counsel should be made. Instead of a three-judge panel naming the special counsel, the Attorney General makes the selection. The special counsel regulations assert that neither the Attorney General nor any official in the Justice Department is to have day-to-day supervision over special counsels. Special counsels are provided with the same power as US Attorneys to conduct investigations and prosecutions. (See Appendix I for a complete version of the special counsel regulations.)

3.2 Legal procedure for impeachment

Background

3.2.1 Under Article II, Section 4 of the *US Constitution*, "[t]he President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

3.2.2 Throughout the US history, Congress has launched more than sixty impeachment investigations of US public officers.²⁹ The House of Representatives (House) has formally impeached public officers 17 times³⁰, with two cases involving a President.³¹ The Senate only convicted (that is, removed) seven public officers on the House charges, and never has a President been removed.

3.2.3 In 1868, President Andrew Johnson was impeached by the House and was acquitted by the Senate. In 1974, President Richard Nixon resigned from office shortly after the Committee of the Judiciary of the House of Representatives (House Judiciary Committee) had approved three articles of impeachment against him. President William Clinton in 1999 was impeached by the House and was acquitted by the Senate.

²⁸ Title 28, Chapter VI, the *Code of Federal Regulations*.

²⁹ See Bazen (2002) pp. 20-4.

³⁰ For details, see Van Tassel & Finkelman (1999).

³¹ However, serious attempts to impeach the President have been fairly common. For example, three different resolutions were introduced against Harry Truman in 1952. Ronald Reagan was another target in both 1983 and 1987, so was George W. Bush in 1991. See Perkins (2003).

Initiation

3.2.4 Under Article I, Section 2, Clause 5 of the *US Constitution*, "[t]he House of Representatives...shall have the sole Power of Impeachment." The power to determine whether impeachment is appropriate in a given time rests solely with the House. The basic procedures to be followed by the House are prescribed in the *Constitution, Jefferson's Manual, and Rules of the House of Representatives*³², previous congressional reports and precedents.

3.2.5 The impeachment process may commence in the House by a Member making a charge of impeachment on the floor on his own initiative, by a Member presenting a memorial listing charges under oath, or by a Member depositing a resolution in the hopper (a box that is used to collect resolutions), which is then referred to the appropriate committee.

3.2.6 If it is a resolution impeaching a specific person, it would usually be referred directly to the House Judiciary Committee. If it is a resolution requesting an inquiry into whether impeachment would be appropriate to a particular person, it would usually be referred to the House Committee on Rules, which would then generally refer it to the House Judiciary Committee.

3.2.7 The impeachment process may also be triggered by non-Members, such as by charges from a state or territorial legislature or grand jury³³, by an independent counsel advising the House of any significant information which he believes might constitute grounds for impeachment³⁴, by petitions or by the Judicial Conference of the US when the impeachment involves a federal judge.

3.2.8 President Nixon's impeachment investigation began with a referral of materials to the House relating to the possible impeachable offences by a special prosecutor appointed by the Attorney General. President Clinton's impeachment was triggered by evidences presented to the House by an independent counsel appointed pursuant to the independent counsel provisions of the federal law.³⁵

³² The House Committee on Rules publishes the House Rules and Manual during the first session of each Congress. This document is formally entitled the Constitution, Jefferson's Manual, and Rules of the House of Representatives and contains each clause of the rules, a summary of recent changes in the House's rules, annotated texts of the Constitution, excerpts from Thomas Jefferson's Manual of Parliamentary Practice, and provisions of law that establish procedures for the House to act on congressional disapproval resolutions.

³³ In the federal system, grand juries are used to investigate crimes and bring charges against persons who are believed to have committed crimes.

³⁴ Under Title 28, Section 595(c) of the *United States Code*, an independent counsel must "advise the House of Representatives of any substantial and credible information...that may constitute grounds for an impeachment." The independent counsel provisions of the federal law expired after 30 June 1999.

³⁵ One commentator argued that there was an increasing influence of federal prosecutors in triggering impeachment investigations and proceedings, see Gerhardt (1999). However, the independent counsel statute had generated considerable criticism as well, which finally led to its demise in 1999.

Investigation

3.2.9 Although the House Judiciary Committee usually conducts impeachment investigations, such matters can be referred to another committee³⁶ or to a special or select committee. In addition, the House Judiciary Committee may refer an impeachment investigation to one of its subcommittees or to a specially created subcommittee.

3.2.10 The focus of the impeachment inquiry is to determine whether the person involved has engaged in treason, bribery, or other "high crimes and misdemeanors". The House Judiciary Committee in the impeachment inquiry of President Nixon prepared a lengthy report on what constituted an impeachable offense.³⁷ The Committee then relied heavily on that report when it ultimately recommended that the full House impeached President Nixon.

3.2.11 In President Clinton's case, the House undertook no independent fact finding and relied on the evidences presented by the independent counsel. The Committee on the Constitution, a subcommittee of the House Judiciary Committee, held hearings to explore the questions of what constituted an impeachable offense.

3.2.12 The House Judiciary Committee will propose an impeachment resolution with articles of impeachment if it determines that grounds for impeachment exist. Articles of impeachment are detailed statements of alleged violations that require, in the view of the House, the removal of a President from his post. The proposed impeachment resolution has to be agreed to by a majority vote of the House Judiciary Committee, which must be accompanied by a written report of the Committee containing minority views of Committee members.

Voting on impeachment

3.2.13 The impeachment resolution will be reported to the full House of Representatives and debated. The House may consider the resolution as a whole, or may vote on each article separately. The House may vote to impeach even if the House Judiciary Committee does not recommend impeachment. A vote to impeach by the House requires a simple majority of those present (so long as quorum is present).

³⁶ For example, the investigation was referred to the House Committee on Reconstruction in the impeachment of President Andrew Johnson in 1868.

³⁷ The Committee of the Judiciary of the House of Representatives (1974).

3.2.14 If the House votes to impeach, impeachment managers³⁸ are appointed through the adoption of a privileged resolution. The House will also adopt a resolution to notify the Senate. When the Senate is ready, the appointed managers will appear before the bar of the Senate to impeach the individual involved and exhibit the articles against him.

Impeachment trial

3.2.15 According to Article I, Section 3, Clause 6 of the *US Constitution*, "[t]he Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside.....".

3.2.16 Impeachment proceedings in the Senate are governed by the *Rules of Procedure and Practice in the Senate when sitting on Impeachment Trials (Senate Rules for Impeachment Trials)*. The Senate could amend or modify these impeachment rules. In impeachment trials, the full Senate may receive evidence and take testimony, or may appoint a committee to serve this purpose.³⁹

3.2.17 During the course of the trial, evidence is presented and witnesses may be examined and cross-examined. The Senate has not adopted standard rules of evidence during an impeachment trial.⁴⁰ The Presiding Officer possesses authority to rule on all questions on evidence and incidental questions. However, the Presiding Officer may choose to put any such question to a vote before the Senate.⁴¹

3.2.18 After the managers and counsel for the accused make their closing arguments, the Senate deliberates the impeachment in closed session.⁴² The Senate will then vote on the articles of impeachment in open session. A conviction on an article of impeachment requires a two-thirds vote of those Senators present.⁴³ If convicted on any article of impeachment, the President is automatically removed from the office. The Senate is not required to vote on all the articles. The Senate can decide not to vote on remaining articles if the accused has already been convicted on one or more of the articles.

³⁸ The resolution names the Members of the House who will act as managers, that is, who will present to the Senate at the impeachment trial in support of the charges contained in the articles of impeachment.

³⁹ In *Nixon v. United States*, the US Supreme Court ruled that the Senate had enormous discretion to determine how an impeachment trial proceeded. The Court opined that the meaning of the word "try" in the Constitution's Impeachment Trial Clause was a nonjusticiable political question. See 506 U.S. 224 (1993).

⁴⁰ For further discussion, see Ripy (2003).

⁴¹ *The Senate Rules for Impeachment Trials*, Rule VII.

⁴² Under Rule XX of the *Senate Rules for Impeachment Trials*, "[a]t all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions."

⁴³ *The US Constitution*, Article I, Section 3, Clause 6.

3.2.19 Other than removing the President from office, the Senate can only impose an additional judgment – whether the impeached President shall be disqualified from holding an office of public trust again.⁴⁴ This requires a simple majority vote.

Impeachable offences

3.2.20 There is no consensus on what kinds of conduct fall within the constitutional category of "treason, bribery, or other high crimes and misdemeanors."⁴⁵ Treason is defined in the *US Constitution*⁴⁶ and in statute⁴⁷, to mean levying war against the US or adhering to their enemies, giving them aid and comfort. Bribery was an offense at common law and is a codified offense⁴⁸.

3.2.21 The phrase "high crimes and misdemeanors" is not defined in the *US Constitution* or in statute. Gerald Ford, when he was a member of the House of Representatives, once commented that impeachable offences were whatever Congress said they were.⁴⁹

3.2.22 The 11 charges against President Johnson fell into two categories. Articles 1 through 9 and 11 charged him with violating the *Tenure of Office Act* and the *Army Appropriations Act* and urging and ordering civilians and military personnel to do the same. Article 10 accused Johnson's impetuous, undignified "utterances, declarations, threats, and harangues" against Congress and against specific Members of Congress.

3.2.23 In 1999, President Clinton was impeached against two articles. The first article accused the President of lying to the grand jury, while the second article accused him of obstructing justice in a civil rights action brought against him. (See Appendix II for a complete version of the two articles.)

⁴⁴ Article I, Section 3, Clause 7 of the *US Constitution* provides that "[j]udgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States...."

⁴⁵ For further discussion, see Bowman & Sepinuck (1999), Kinkopf (2000) and Gernardt (2000).

⁴⁶ Article III, Section 3, Clause 1 of the *US Constitution* provides that "[t]reason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

⁴⁷ Title 18, Section 2381, the *United States Code*.

⁴⁸ See paragraph 3.1.2 of this report.

⁴⁹ "[A]n impeachable offence is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results in whatever offense or offenses two-thirds of other body considers to be serious to require removal of the accused from office." The comment was made in the course of debate over whether to initiate impeachment proceedings against Supreme Court Justice William O. Douglas.

3.2.24 The following is an extract from a congressional report published in 1974, which might serve as an indication on how the question of what constitutes impeachable offense was dealt with.⁵⁰

"Each of the thirteen American impeachments involved charges of misconduct incompatible with the official position of the officeholder. This conduct falls into three broad categories; (1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.

.....
The purpose of impeachment under the Constitution is indicated by the limited scope of the remedy (removal from office and possible disqualification from future office) and by the stated grounds for impeachment (treason, bribery and other high crimes and misdemeanors). It is not controlling whether treason and bribery are criminal. More important, they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and thus are 'high' offenses in the sense that word was used in English impeachment.

.....
Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement – substantiality. In deciding whether this further requirement has been met, the facts must be considered as a whole in the context of the office, not in terms of separate or isolated events. Because impeachment of a President is a grave step for the nation, it is to be predicated only on conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office."

⁵⁰ The Committee of the Judiciary of the House of Representatives (1974).

Chapter 4 – The Republic of Korea

4.1 Legal regulation for corruption control

Relevant legal regulation

4.1.1 The President is both the head of state and the head of government of the Republic of Korea (Korea). There is no specific law or regulation for corruption control of the President.⁵¹

4.1.2 The President, similar to all government officials, is subject to the *Anti-corruption Act*, the *Public Service Ethics Act* and relevant corruption provisions under the *Criminal Act*.

4.1.3 Under the *Anti-corruption Act*, the Korea Independent Commission Against Corruption (KICAC) was established in 2002. KICAC is a presidential agency, whose chairman is appointed by the President. It has the authority to take all necessary measures to prevent corruption, to design and evaluate anti-corruption policies, to enhance education and public relations and to inspect report and protect whistle-blowers. However, KICAC is not equipped with the power to investigate corruption allegations and only has a limited power to monitor certain aspects of the process of investigation.

4.1.4 Articles 129-133 of the *Criminal Act* criminalise the payment and receipt of a bribe to public officials.⁵² Under Article 129 of the *Criminal Act*, a public official "*who receives, demands or promises to accept a bribe in connection with his duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years.*" The punishment is enhanced by the *Act on the Aggravated Punishment, etc., of Specific Crimes*, which provides that the punishment is: (1) from 10 years in prison to life imprisonment if the bribe is not less than 50 million Won (HK\$373,768) and (2) at least five years in prison if the bribe is more than 10 million Won (HK\$74,747) but less than 50 million Won (HK\$373,768).⁵³

4.1.5 The *Public Service Ethics Act* requires public financial disclosure by the President, the Prime Minister, Members of the National Assembly and other senior public officials. Such requirement is extended to their spouses and certain children.

⁵¹ The President is elected for a single five-year term by direct election.

⁵² For details, see Ehrlich & Kang (2002).

⁵³ The *Act on the Aggravated Punishment, etc., of Specific Crimes*, Article 2.

Investigation and prosecution procedure

4.1.6 Under the *Korean Constitution*, the President is entitled to criminal immunity during his tenure of office except for insurrection or treason.

4.1.7 In Korea, public prosecutors have the power to initiate and conclude criminal investigations. Prosecutors may initiate an investigation or direct the police regarding the investigation of an offence. The Prosecutor General⁵⁴ heads the Supreme Prosecutor's Office, and is appointed by the President for a two-year term without reappointment.

4.1.8 The criminal investigation and prosecution procedure for corruption charges against high-ranking public officials follows the general criminal procedure. Prosecutors in Korea have limited authority to conduct wiretaps and undercover stings, to plea bargain, and to grant immunity to co-operating suspects and witnesses.⁵⁵

4.1.9 If a high-ranking public official, including the President, is involved in a corruption complaint filed with KICAC, KICAC may file an accusation with the Public Prosecutor's Office (PPO) for criminal investigation. PPO is required to notify KICAC the result of the investigation. KICAC may file an adjudication with the High Court when PPO decides not to institute public action against cases involving bribery, embezzlement and breach of trust.⁵⁶

4.1.10 Korea has an ad hoc independent counsel system. In order to appoint an independent counsel for a defined corruption case, the National Assembly must pass a bill. The bill prescribes the object of investigation, the range of functions and the period of investigation.

4.2 Legal procedure for impeachment

Background

4.2.1 The impeachment of the President in Korea is mainly regulated by the Constitution, the *Constitutional Court Act* and the *National Assembly Act*⁵⁷.

⁵⁴ The Minister of Justice, as the chief supervisor of prosecutorial functions, has limited power to give direction to public prosecutors. The Minister may generally direct and supervise public prosecutors but can only direct and supervise the Prosecutor General in specific cases. The *Public Prosecutor's Office Act*, Article 8.

⁵⁵ Johnson (2004) p. 61.

⁵⁶ The *Anti-corruption Act*, Articles 29(4) & 30.

⁵⁷ The *National Assembly Act* governs the procedures of the National Assembly. Chapter 11 of the *National Assembly Act* specifically provides for the regulation of an impeachment motion.

4.2.2 The *Korean Constitution* stipulates that the National Assembly⁵⁸ may pass a motion for the impeachment of the President if he has violated the Constitution or other Acts in the performance of official duties.⁵⁹

4.2.3 In 2004, for the first time in Korean history, the National Assembly impeached President Roh Moo-hyun and brought about his temporary suspension of presidency. President Roh was later restated by the Constitutional Court of Korea.⁶⁰

Initiation

4.2.4 Under the *Korean Constitution*, a motion for impeachment of the President shall be proposed by a majority of the Members of the National Assembly.⁶¹

4.2.5 Under Article 130 (1) of the *National Assembly Act*, the Speaker of the National Assembly is required to inform the Assembly immediately when a proposition of impeachment prosecution is filed. The proposition may be referred to the Legislation and Judiciary Committee⁶² for investigation by a resolution.

4.2.6 If the Assembly fails to refer the proposition motion to the Legislation and Judiciary Committee, the motion will lapse when it has not been voted by ballot at the Assembly's plenary session within 24 to 72 hours of the filing of the motion.⁶³

Investigation

4.2.7 If the proposition motion is referred to the Legislation and Judiciary Committee, the Committee must abide by the *Act on the Inspection and Investigation of State Administration mutatis mutandis* during its investigation. The *National Assembly Act* is silent on how the result of the investigation should be reported to the National Assembly.

⁵⁸ The National Assembly is a unicameral legislature, consisting of 273 Members elected by popular vote for a four-year term.

⁵⁹ Article 65(1) of the *Korean Constitution* provides that "[i]n case the President, the Prime Minister, members of the State Council, heads of Executive Ministries, Justices of the Constitutional Court, judges, members of the National Election Commission, the Chairman and members of the Board of Audit and Inspection, and other public officials designated by Act have violated the Constitution or other Acts in the performance of official duties, the National Assembly may pass motions for their impeachment."

⁶⁰ For details, see Lee (2005).

⁶¹ The *Korean Constitution*, Article 65(2).

⁶² It is one of the standing committees of the National Assembly, whose chairman is elected among its committee members

⁶³ The *National Assembly Act*, Article 130 (2).

4.2.8 In President Roh's impeachment case, the National Assembly did not conduct any investigation prior to its voting on the impeachment motion. When the impeachment case was subsequently adjudicated, the Constitutional Court of Korea held that the National Assembly had its own discretion and "*even if the National Assembly did not perform a separate investigation..., this was not in violation of the Constitution or statutes.*"⁶⁴

Voting on impeachment

4.2.9 The *Korean Constitution* requires that a motion for impeachment of the President shall be approved by two-thirds or more of the Members of the National Assembly.⁶⁵

4.2.10 When the National Assembly passes the impeachment motion, the Speaker is required to notify, without delay, both the chairman of the Legislation and Judiciary Committee and the Constitutional Court.⁶⁶ The power of the President will automatically be suspended.⁶⁷

Impeachment trial

4.2.11 The Constitutional Court of Korea has jurisdiction over impeachment proceedings.⁶⁸ When the National Assembly passes the impeachment motion, the President shall be suspended from exercising his power until the impeachment has been adjudicated by the Constitutional Court.

4.2.12 Under the *Constitutional Court Act*, the Court must hold oral arguments in adjudicating impeachments⁶⁹ and abide by "the laws and regulations relating to the criminal litigation *mutatis mutandis*" during the proceedings.⁷⁰ The chairman of the Legislation and Judiciary Committee of the National Assembly acts as the impeachment prosecutor before the Court.⁷¹

⁶⁴ 2004 Hun-Nal (May 14, 2004). The Constitutional Court of Korea's Decision on impeachment of the President Roh Moo-hyan case.

⁶⁵ The *Korean Constitution*, Article 65(2).

⁶⁶ The *National Assembly Act*, Article 134.

⁶⁷ Ibid.

⁶⁸ The Constitutional Court is not the highest court in the Korean judicial system. It is a specialised body designed to adjudicate constitutional matters such as the constitutionality of a law, the dissolution of a political party and judicial disputes among state institutions. The Court consists of nine justices appointed by the President. Among the nine justices, it is required that three justices shall be appointed from persons selected by the National Assembly and three shall be appointed from persons nominated by the Chief Justice of the Supreme Court.

⁶⁹ The *Constitutional Court Act*, Article 39(1).

⁷⁰ The *Constitutional Court Act*, Article 40(1).

⁷¹ The *Constitutional Court Act*, Article 49.

4.2.13 In order to confirm the impeachment, six out of nine justices of the Constitutional Court must vote in favour.⁷² When a request for impeachment is justified, the Constitutional Court shall pronounce a judgment to the effect that the person who is impeached be removed from public office. Before making such judgement, the Constitutional Court must prove that "*there is a valid ground for the petition for impeachment adjudication.*"⁷³ A judgment upholding impeachment does not exempt the person impeached from other civil or penal liabilities.⁷⁴ Any person who is removed by impeachment is prohibited to be a public official for the next five years.

Impeachable offences

4.2.14 The *Korean Constitution* provides that the President can be impeached if he has violated "*the Constitution or other Acts in the performance of official duties.*" Other than this requirement, the Constitution does not specify what types of offences are impeachable. In 2004, President Roh was impeached on charges of disturbance of the rule of law, corruption and abuse of power, and mismanagement of the economy.

4.2.15 In President Roh's impeachment case, the Constitutional Court laid down certain principles regarding impeachable offences for the President. The President can be impeached only for serious violations of law⁷⁵, for conduct only while in office, and only when the damage inflicted on the fundamental constitutional order is so grave that only his removal can repair the damage. The Constitutional Court stated that

"whether or not to remove a public official from office should be determined by balancing the 'gravity of the violation of law' by the public official against the 'impact of the decision to remove.' As the essential nature of the impeachment adjudication process lies in the protection and the preservation of the Constitution, the 'gravity of the violation of law' means the 'gravity in terms of the protection of the constitutional order.'

.....

⁷² The *Korean Constitution*, Article 113.

⁷³ The *Constitutional Court Act*, Article 53(1).

⁷⁴ The *Korean Constitution*, Article 65(4).

⁷⁵ The Constitutional Court ruled that political chaos and economic disruption caused by unfaithful performance of the official duties and reckless management of the state affairs cannot be a subject matter for an impeachment adjudication.

on one hand, from the standpoint that the impeachment adjudication process is a procedure ultimately dedicated to the protection of the Constitution, a decision to remove the President from office may be justified only when the President's act of violating law has a significant meaning in terms of the protection of the Constitution to the extent that it is requested to protect the Constitution and restore the impaired constitutional order by a decision of removal. On the other hand, from the standpoint that the President is an institution representing the public's will directly vested with democratic legitimacy through election, a valid ground for impeaching the President can be found only when the President has lost the public's trust by the act of violation of law to the extent that such public trust vested in the President should be forfeited while the presidential term still remains."⁷⁶

⁷⁶ 2004 Hun-Nal (May 14, 2004) Section 6(B).

Chapter 5 – Analysis

5.1 Introduction

5.1.1 Tables 1 to 4 (on pages 28-32) summarize various attributes of the legal regulation for corruption control and impeachment of the head of state/government in the three places studied and the Hong Kong Special Administrative Region (HKSAR). The following analysis will look at some of the important issues with reference to the HKSAR.

5.2 Legal regulation for corruption control

Relevant legal regulation

5.2.1 Although all the heads of state/government of the three places studied hold unique constitutional status, they are subject to legal regulation for corruption control similar to other public officials. In both the UK and Korea, there is no specific law and regulation for corruption control of the head of state/government. Corruption in the UK is regulated by the common and statute laws, which are applicable to the Prime Minister. The UK is currently considering new legislation to replace all or parts of the existing relevant legal provisions of corruption and to incorporate the common law offence of bribery.

5.2.2 In Korea, the President, similar to all government officials, is subject to the *Anti-corruption Act*, the *Public Service Ethics Act* and relevant corruption provisions under the *Criminal Act*.

5.2.3 In the US, corruption control of the President is governed by the Constitution and statute law. The *US Constitution* prohibits the President from taking advantage of his position to realize economic benefits, at least during his term in office. The Constitution also provides that bribery is an impeachable offence for the President.

5.2.4 In the HKSAR, there are only a handful of legal provisions in relation to corruption prevention of the Chief Executive (CE). The *Basic Law* requires that CE "*must be a person of integrity, dedicated to his or her duties.*"⁷⁷ CE is required, on assuming office, to declare his assets to the Chief Justice of the Court of Final Appeal of the HKSAR.⁷⁸ CE is also subject to an impeachment mechanism under which the Legislative Council (LegCo) may pass a motion of impeachment and report it to the Central People's Government for decision if CE is charged with serious breach of law or dereliction of duty and he refuses to resign.⁷⁹

⁷⁷ The *Basic Law*, Article 47.

⁷⁸ Ibid.

⁷⁹ The *Basic Law*, Article 73(9).

5.2.5 Since 1999, LegCo has expressed concern over the application of certain provisions of the *Prevention of Bribery Ordinance (PBO)* to CE.⁸⁰ CE is subject to the relevant provisions of *PBO* applicable to all other citizens of the HKSAR. However, CE is not a "government officer" or a "public servant" as defined under *PBO* and is, therefore, not subject to those sections of *PBO* that apply to "government officers" or "public servants". The provisions concerned are section 3 (soliciting or accepting an advantage), section 4(2) & 4(3) (bribery without lawful authority or reasonable excuse), section 5(2) (bribery in regard to contracts), section 10 (possession of unexplained property), section 12 (penalty for offences), section 12AA (confiscation of assets) and section 16 (power to obtain assistance).

5.2.6 According to the HKSAR Government, CE is subject to the common law offence of bribery.⁸¹ In October 2005, the Government announced that it was ready to put forward a proposal to apply certain provisions of *PBO* to CE. The Government plans to introduce legislative amendments so as to make sections 4, 5 and 10 of *PBO* applicable to CE.⁸²

Investigation and prosecution procedure

5.2.7 In both the US and the UK, there are no legal provisions providing express immunity for the President or the Prime Minister. Under the *Korean Constitution*, the President is entitled to criminal immunity during his tenure of office except for insurrection or treason. In the HKSAR, the *Basic Law* does not provide any immunity for CE. In all of the three places studied, there are no legal provisions requiring prosecution agencies to advise the respective legislature of any credible information that may constitute grounds for an impeachment.

5.2.8 In the UK, corruption charges are investigated by the police and prosecuted by the Crown Prosecution Service. There are no provisions for special counsel, grand juries or special commissions.

5.2.9 In the US, the Department of Justice has primary jurisdiction for investigation and prosecution of corruption charges against federal officials. In Korea, the criminal investigation and prosecution procedure for corruption charges against high-ranking public officials follows the general criminal procedure. Korean public prosecutors have the power to initiate and conclude criminal investigations.

⁸⁰ For details, see "Application of certain provisions of Prevention of Bribery Ordinance to the Chief Executive" LegCo Paper No. CB(2)1091/04-05(01).

⁸¹ The Administration opined that the codification of the common law offence of bribery for the purpose of application to CE might bring about more problems than it intended to resolve. See "Application of Prevention of Bribery Provisions to the Chief Executive" LegCo Paper No. CB(2)1448/00-01(02).

⁸² See "Proposal to apply certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive" LegCo Paper No. CB(2)195/05-06(02).

5.2.10 Both the US and Korea have a special mechanism to investigate executive misconduct. In the US, after the demise of the independent counsel legislations, the Department of Justice issued the special counsel regulations in 1999. The regulations allow the Attorney General to appoint an outside special counsel to conduct investigation when the prosecution by the Department of Justice would pose a conflict of interest. The National Assembly of Korea may pass a bill to appoint an independent counsel to investigate a corruption case.

5.2.11 In Korea, although the Korea Independent Commission Against Corruption is not equipped with the power to investigate corruption allegations, the Commission has a limited power to monitor certain aspects of the process of investigations involving senior public officials.

5.2.12 In the HKSAR, investigations concerning allegations of corruption are carried out by the Independent Commission Against Corruption (ICAC). The Operations Department of ICAC is the investigative arm and is responsible for performing the statutory duties set out in the *Independent Commission Against Corruption Ordinance*.⁸³ Special investigation powers are legally conferred to the Commissioner of ICAC.⁸⁴ The Operations Review Committee, an advisory committee appointed by CE, oversees the process of investigative work in the Operations Department.⁸⁵ If a decision is made that no investigation should be taken, that decision has to be recommended by the Operations Review Committee.

5.2.13 Section 31(1) of *PBO* provides that no prosecution for an offence under Part II (including offences under sections 3, 4, 5, and 10) shall be instituted except with the consent of the Secretary of Justice.⁸⁶

5.2.14 In October 2005, the Government proposed that upon receipt of complaints against CE committing any proposed *PBO* offences applicable to CE, the Secretary for Justice may refer those with *prima facie* case and the findings of the ICAC's preliminary investigation to LegCo. LegCo may consider invoking the impeachment procedure under Article 73(9) of the *Basic Law*. If LegCo decides to proceed with the impeachment, the Secretary of Justice may exercise discretion and allows LegCo to complete the impeachment investigation and impeachment proceedings, before he may exercise his power of criminal prosecution or require ICAC to conduct further investigation.⁸⁷

⁸³ The *Independent Commission Against Corruption Ordinance*, sections 12(a)–(c). The duties are mainly to investigate corrupt practices and suspected offences under the *Independent Commission Against Corruption Ordinance*, the *Prevention of Bribery Ordinance* and the *Election (Corrupt and Illegal Conduct) Ordinance*.

⁸⁴ The Commissioner's powers of investigation are mainly prescribed in Part III of *PBO*.

⁸⁵ For a complete list of the terms of reference of the Operations Review Committee, see http://www.icac.org.hk/eng/power/powe_acct_5.html.

⁸⁶ McWalters (2003) chapter 13.

⁸⁷ See "Proposal to apply certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive" LegCo Paper No. CB(2)195/05-06(02) and "Proposal to apply certain provisions of the Prevention of Bribery Ordinance to the Chief Executive" LegCo Paper No. CB(2)691/05-06(01).

5.3 Legal procedure for impeachment

5.3.1 The tradition of impeachment has its origins in the laws of England. The impeachment process in the three places studied is similarly governed by their constitutions, parliamentary procedures and relevant statutes regulating the institutions concerned.

5.3.2 The UK system permits any person to be impeached by the House of Commons for any crime or misdemeanour. The US and Korean systems only permit certain senior public officers, including the President, to be impeached.

5.3.3 Under both the UK and the US systems, it is for the impeachment to be made in the lower house of the respective legislature and for the trial to be held in the upper house. On the other hand, impeachment disputes are settled by a judicial body in Korea. The Constitutional Court of Korea has jurisdiction over impeachment proceedings.⁸⁸ After the National Assembly passes an impeachment motion, the motion will be submitted to the Constitutional Court of Korea for a determination.

5.3.4 In the three places studied, the respective legislature has its own discretion with regard to the impeachment procedure. For example, the legislature can determine whether to perform any independent investigation and how an impeachment trial should proceed.

5.3.5 Conviction under the old English impeachment system could result in punishment by imprisonment, fine or even death. In the US and Korea, conviction may only lead to the removal of office of the accused. The US Senate may impose an additional punishment to prohibit the accused from holding an office of public trust again. Any person who is removed by impeachment in Korea is prohibited to be a public official for the next five years.

5.3.6 In the HKSAR, according to Article 73(9) of the *Basic Law*, if a motion initiated jointly by one-fourth of all the Members of LegCo charges CE with serious breach of law or dereliction of duty and if he refuses to resign, LegCo may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to LegCo. If the committee considers the evidence sufficient to substantiate such charges, LegCo may pass a motion of impeachment by a two-thirds majority of all its Members and report it to the Central People's Government for decision.

⁸⁸ This kind of arrangement is not unique as other places such as Germany and Hungary have similar arrangement. See Kada (2003).

5.3.7 When performing the impeachment function, LegCo is equipped with the power to summon persons concerned to testify or give evidence, as provided by Article 73(10) of the *Basic Law*.

Impeachable offences

5.3.8 In all of the three places studied, the particular kind of misconduct falling within the boundary of impeachable offence is a contentious issue. Historically, the English impeachment was used for "high crimes and misdemeanors" beyond the reach of law, or where no other authority in the state could prosecute. They include misapplication of public funds, abuse of official power and corruption.

5.3.9 The US President may be impeached in cases involving treason, bribery, and "high crimes and misdemeanors". The phrase "high crimes and misdemeanors" is not defined in the *US Constitution* or in statute. Past American impeachments involved charges of misconduct, such as exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government, behaving in a manner grossly incompatible with the proper function and purpose of the office, and employing the power of the office for an improper purpose or for personal gain.

5.3.10 In Korea, the President may be impeached if he has violated the Constitution or other laws in the performance of official duties. A ruling on a recent presidential impeachment case specifies that the President can be impeached only for serious violations of law, for conduct only while in office, and only when the damage inflicted on the fundamental constitutional order is so grave that only his removal can repair the damage.

5.3.11 In the HKSAR, according to Article 73(9) of the *Basic Law*, CE may be impeached with serious breach of law or dereliction of duty and if he refuses to resign. LegCo may pass a motion of impeachment if an independent investigation committee chaired by the Chief Justice of the Court of Final Appeal considers the evidence sufficient to substantiate such charges⁸⁹.

⁸⁹ There were some changes to Article 73(9) during the drafting process of the *Basic Law*. In April 1988, the Drafting Committee of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China published the Draft Basic Law for Solicitation of Opinions (DBLOS). In February 1989, the Standing Committee of the Seventh National People's Congress resolved to publish the Basic Law (Draft) of the Hong Kong Special Administrative Region (BLD). In both DBLOS and BLD, the corresponding article was Article 72(9). In DBLOS, Article 72(9) provides that LegCo may pass a motion of impeachment if CE is accused of serious breach of law or dereliction of duty. Under the provisions in BLD, the impeachment criteria were changed to that CE must be accused of serious breach of law or dereliction of duty and if he still refuses to resign. BLD also specifies that LegCo must pass a motion for investigation so as to give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. See Appendix III for a comparison of Article 73(9) in DBLOS, BLD and the *Basic Law*.

Table 1 — Legal regulation for corruption control

Places	Relevant legal regulation	Investigation and prosecution procedure
UK	The <i>Public Bodies Corrupt Practices Act 1889</i> , the <i>Prevention of Corruption Act 1906</i> , the <i>Prevention of Corruption Act 1916</i> and the common law offence of bribery.	The police are responsible for investigation and charging the person. The Crown Prosecution Service decides whether to prosecute. No provisions for special counsel, grand juries or special commissions.
US	The constitution, criminal laws, the <i>Ethics on Government Act of 1978</i> .	The Department of Justice has primary jurisdiction for investigation and prosecution of corruption charges against federal officials involving potential violations of federal law. The Attorney General may appoint an outside special counsel to conduct investigation when the prosecution by the Department of Justice would pose a conflict of interest and such appointment would be in the public interest.
Korea	The <i>Anti-corruption Act</i> , the <i>Public Service Ethics Act</i> and relevant corruption provisions under the <i>Criminal Act</i> .	Korean public prosecutors have the power to initiate and conclude criminal investigations. The criminal investigation and prosecution procedure for corruption charges against high-ranking public officials follows the general criminal procedure. The National Assembly of Korea may pass a bill to appoint an independent counsel to perform corruption investigation.
HKSAR	The <i>Basic Law</i> and the common law offence of bribery.	Investigations concerning allegations of corruption are carried out by the Independent Commission Against Corruption.

Table 2 — Legal regulation for impeachment

Places	Regulatory framework	Basic Arrangement
UK	Parliamentary procedures.	The impeachment is to be made in the House of Commons and the trial to be held in the House of Lords.
US	The Constitution, precedents and congressional procedures.	The House of Representatives has the sole power of impeachment, while the Senate has the sole power to try all impeachments.
Korea	The Constitution, the <i>National Assembly Act</i> and the <i>Constitutional Court Act</i> .	The National Assembly of Korea has the power to pass a motion of impeachment, while the Constitutional Court of Korea has the power to adjudicate the impeachment.
HKSAR	The <i>Basic Law</i> .	The Legislative Council (LegCo) may pass a motion of impeachment and report it to the Central People's Government for decision if the Chief Executive (CE) is charged with serious breach of law or dereliction of duty and if he refuses to resign.

Table 3 — The impeachment process

Places	Initiation	Investigation	Voting on impeachment	Impeachment trial
UK	The process starts with a Member of Parliament (MP) charging the accused of high treason, or certain "high crimes and misdemeanors".	The House may perform examination to determine whether there are sufficient grounds to justify the impeachment.	If the impeachment motion is agreed by the House, one or more MPs will go to the bar of the House of Lords to impeach the accused person.	The trial is held at the House of Lords, with the Lord Chancellor presiding. Conviction under the old English impeachment system could result in punishment by imprisonment, fine or even death.
US	The process may be triggered in the House of Representatives by a resolution proposed by a Member or by acknowledged evidence presented to the House.	Although the House Judiciary Committee usually conducts impeachment investigations, such matters can be referred to another committee. The House Judiciary Committee will propose an impeachment resolution with articles of impeachments if it determines that grounds for impeachment exist.	The House may consider the impeachment resolution as a whole, or may vote on each article separately. A vote to impeach by the House requires a simple majority of those present. If the House votes to impeach, impeachment managers will be appointed to appear before the bar of the Senate to impeach the accused person and exhibit the articles against him.	The trial is held at the Senate, with the Chief Justice presiding. If convicted on any article of impeachment, the President is automatically removed from the office. The Senate may further determine that the impeached President shall be disqualified from holding an office of public trust again.

Table 3 — The impeachment process (cont'd)

Places	Initiation	Investigation	Voting on impeachment	Impeachment trial
Korea	A motion for impeachment of the President must be proposed by a majority of the members of the National Assembly.	The proposition of impeachment prosecution may be referred to the Legislation and Judiciary Committee for investigation by a resolution.	If the National Assembly fails to refer the proposition motion to the Legislation and Judiciary committee, the motion will lapse when it has not been voted by ballot at the Assembly's plenary session within 24 to 72 hours of the filing of the motion. A motion of impeachment of the President requires the approval by two-thirds or more of the Members of the National Assembly.	The trial is held at the Constitutional Court of Korea. When the impeachment is justified, the Court pronounces the accused be removed from public office.
HKSAR	The process is triggered when a motion is raised jointly by one-fourth of all Members of LegCo charging CE with serious breach of law or dereliction of duty and if he refuses to resign.	LegCo may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee is responsible for carrying out the investigation and reporting its findings to LegCo.	If the investigation committee considers the evidence sufficient to substantiate such charges, LegCo may pass a motion of impeachment by a two-thirds majority of all its Members.	Not applicable, as the motion of impeachment must be reported to the Central People's Government for decision.

Table 4 — Impeachable offences

Places	Impeachable offences
UK	Historically, the English impeachment was used for "high crimes and misdemeanors" beyond the reach of law, or where no other authority in the state could prosecute. They include misapplication of public funds, abuse of official power and corruption.
US	The US President may be impeached in cases involving treason, bribery, and "high crimes and misdemeanors". Past American impeachments involved charges of misconduct, such as exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government, behaving in a manner grossly incompatible with the proper function and purpose of the office, and employing the power of the office for an improper purpose or for personal gain.
Korea	The Korean President may be impeached if he has violated the Constitution or other laws in the performance of official duties. A ruling on a recent presidential impeachment case specifies that the President can be impeached only for serious violations of law, for conduct only while in office, and only when the damage inflicted on the fundamental constitutional order is so grave that only his removal can repair the damage.
HKSAR	CE may be impeached with serious breach of law or dereliction of duty and if he refuses to resign.

Appendix I

**PART 600—GENERAL POWERS OF
SPECIAL COUNSEL**

- Sec.
600.1 Grounds for appointing a Special Counsel.
600.2 Alternatives available to the Attorney General.
600.3 Qualifications of the Special Counsel.
600.4 Jurisdiction.
600.5 Staff.
600.6 Powers and authority.
600.7 Conduct and accountability.
600.8 Notification and reports by the Special Counsel.
600.9 Notification and reports by the Attorney General.
600.10 No creation of rights.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

SOURCE: 64 FR 37042, July 9, 1999, unless otherwise noted.

§ 600.1 Grounds for appointing a Special Counsel.

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

§ 600.2 Alternatives available to the Attorney General.

When matters are brought to the attention of the Attorney General that might warrant consideration of appointment of a Special Counsel, the Attorney General may:

(a) Appoint a Special Counsel;
(b) Direct that an initial investigation, consisting of such factual inquiry or legal research as the Attorney General deems appropriate, be conducted in order to better inform the decision; or

(c) Conclude that under the circumstances of the matter, the public

interest would not be served by removing the investigation from the normal processes of the Department, and that the appropriate component of the Department should handle the matter. If the Attorney General reaches this conclusion, he or she may direct that appropriate steps be taken to mitigate any conflicts of interest, such as recusal of particular officials.

§ 600.3 Qualifications of the Special Counsel.

(a) An individual named as Special Counsel shall be a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department of Justice policies. The Special Counsel shall be selected from outside the United States Government. Special Counsels shall agree that their responsibilities as Special Counsel shall take first precedence in their professional lives, and that it may be necessary to devote their full time to the investigation, depending on its complexity and the stage of the investigation.

(b) The Attorney General shall consult with the Assistant Attorney General for Administration to ensure an appropriate method of appointment, and to ensure that a Special Counsel undergoes an appropriate background investigation and a detailed review of ethics and conflicts of interest issues. A Special Counsel shall be appointed as a "confidential employee" as defined in 5 U.S.C. 7511(b)(2)(C).

§ 600.4 Jurisdiction.

(a) *Original jurisdiction.* The jurisdiction of a Special Counsel shall be established by the Attorney General. The Special Counsel will be provided with a specific factual statement of the matter to be investigated. The jurisdiction of a Special Counsel shall also include the authority to investigate and prosecute federal crimes committed in the course of, and with intent to interfere with, the Special Counsel's investigation, such as perjury, obstruction of

Appendix I (cont'd)

§ 600.5

justice, destruction of evidence, and intimidation of witnesses; and to conduct appeals arising out of the matter being investigated and/or prosecuted.

(b) *Additional jurisdiction.* If in the course of his or her investigation the Special Counsel concludes that additional jurisdiction beyond that specified in his or her original jurisdiction is necessary in order to fully investigate and resolve the matters assigned, or to investigate new matters that come to light in the course of his or her investigation, he or she shall consult with the Attorney General, who will determine whether to include the additional matters within the Special Counsel's jurisdiction or assign them elsewhere.

(c) *Civil and administrative jurisdiction.* If in the course of his or her investigation the Special Counsel determines that administrative remedies, civil sanctions or other governmental action outside the criminal justice system might be appropriate, he or she shall consult with the Attorney General with respect to the appropriate component to take any necessary action. A Special Counsel shall not have civil or administrative authority unless specifically granted such jurisdiction by the Attorney General.

§ 600.5 Staff.

A Special Counsel may request the assignment of appropriate Department employees to assist the Special Counsel. The Department shall gather and provide the Special Counsel with the names and resumes of appropriate personnel available for detail. The Special Counsel may also request the detail of specific employees, and the office for which the designated employee works shall make reasonable efforts to accommodate the request. The Special Counsel shall assign the duties and supervise the work of such employees while they are assigned to the Special Counsel. If necessary, the Special Counsel may request that additional personnel be hired or assigned from outside the Department. All personnel in the Department shall cooperate to the fullest extent possible with the Special Counsel.

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§ 600.6 Powers and authority.

Subject to the limitations in the following paragraphs, the Special Counsel shall exercise, within the scope of his or her jurisdiction, the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney. Except as provided in this part, the Special Counsel shall determine whether and to what extent to inform or consult with the Attorney General or others within the Department about the conduct of his or her duties and responsibilities.

§ 600.7 Conduct and accountability.

(a) A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice. He or she shall consult with appropriate offices within the Department for guidance with respect to established practices, policies and procedures of the Department, including ethics and security regulations and procedures. Should the Special Counsel conclude that the extraordinary circumstances of any particular decision would render compliance with required review and approval procedures by the designated Departmental component inappropriate, he or she may consult directly with the Attorney General.

(b) The Special Counsel shall not be subject to the day-to-day supervision of any official of the Department. However, the Attorney General may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued. In conducting that review, the Attorney General will give great weight to the views of the Special Counsel. If the Attorney General concludes that a proposed action by a Special Counsel should not be pursued, the Attorney General shall notify Congress as specified in § 600.9(a)(3).

(c) The Special Counsel and staff shall be subject to disciplinary action for misconduct and breach of ethical duties under the same standards and to the same extent as are other employees of the Department of Justice. Inquiries into such matters shall be handled

Appendix I (cont'd)

Offices of Independent Counsel, Justice**§ 600.10**

through the appropriate office of the Department upon the approval of the Attorney General.

(d) The Special Counsel may be disciplined or removed from office only by the personal action of the Attorney General. The Attorney General may remove a Special Counsel for misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies. The Attorney General shall inform the Special Counsel in writing of the specific reason for his or her removal.

§ 600.8 Notification and reports by the Special Counsel.

(a) *Budget.* (1) A Special Counsel shall be provided all appropriate resources by the Department of Justice. Within the first 60 days of his or her appointment, the Special Counsel shall develop a proposed budget for the current fiscal year with the assistance of the Justice Management Division for the Attorney General's review and approval. Based on the proposal, the Attorney General shall establish a budget for the operations of the Special Counsel. The budget shall include a request for assignment of personnel, with a description of the qualifications needed.

(2) Thereafter, 90 days before the beginning of each fiscal year, the Special Counsel shall report to the Attorney General the status of the investigation, and provide a budget request for the following year. The Attorney General shall determine whether the investigation should continue and, if so, establish the budget for the next year.

(b) *Notification of significant events.* The Special Counsel shall notify the Attorney General of events in the course of his or her investigation in conformity with the Departmental guidelines with respect to Urgent Reports.

(c) *Closing documentation.* At the conclusion of the Special Counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel.

§ 600.9 Notification and reports by the Attorney General.

(a) The Attorney General will notify the Chairman and Ranking Minority Member of the Judiciary Committees of each House of Congress, with an explanation for each action—

(1) Upon appointing a Special Counsel;

(2) Upon removing any Special Counsel; and

(3) Upon conclusion of the Special Counsels investigation, including, to the extent consistent with applicable law, a description and explanation of instances (if any) in which the Attorney General concluded that a proposed action by a Special Counsel was so inappropriate or unwarranted under established Departmental practices that it should not be pursued.

(b) The notification requirement in paragraph (a)(1) of this section may be tolled by the Attorney General upon a finding that legitimate investigative or privacy concerns require confidentiality. At such time as confidentiality is no longer needed, the notification will be provided.

(c) The Attorney General may determine that public release of these reports would be in the public interest, to the extent that release would comply with applicable legal restrictions. All other releases of information by any Department of Justice employee, including the Special Counsel and staff, concerning matters handled by Special Counsels shall be governed by the generally applicable Departmental guidelines concerning public comment with respect to any criminal investigation, and relevant law.

§ 600.10 No creation of rights.

The regulations in this part are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative.

Appendix II

**III. ARTICLES OF IMPEACHMENT AGAINST PRESIDENT WILLIAM JEFFERSON
CLINTON**

[H. RES. 611, 105TH CONG., 2D SESS.]

[Exhibited to Senate on January 7, 1999]

RESOLUTION

Impeaching William Jefferson Clinton, President of the
United States, for high crimes and misdemeanors.

Resolved, That William Jefferson Clinton, President of
the United States, is impeached for high crimes and
misdemeanors, and that the following articles of im-
peachment be exhibited to the United States Senate:

Articles of impeachment exhibited by the House of
Representatives of the United States of America in the
name of itself and of the people of the United States of
America, against William Jefferson Clinton, President
of the United States of America, in maintenance and
support of its impeachment against him for high crimes
and misdemeanors.

ARTICLE I

In his conduct while President of the United States,
William Jefferson Clinton, in violation of his constitu-
tional oath faithfully to execute the office of President
of the United States and, to the best of his ability, pre-
serve, protect, and defend the Constitution of the
United States, and in violation of his constitutional duty
to take care that the laws be faithfully executed, has
willfully corrupted and manipulated the judicial process
of the United States for his personal gain and exoner-
ation, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore
to tell the truth, the whole truth, and nothing but the
truth before a Federal grand jury of the United States.
Contrary to that oath, William Jefferson Clinton will-
fully provided perjurious, false and misleading testi-

Appendix II (cont'd)

mony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE II

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

Appendix II (cont'd)

The means used to implement this course of conduct or scheme included one or more of the following acts:

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

Appendix II (cont'd)

(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Passed the House of Representatives December 19, 1998.

NEWT GINGRICH,
Speaker of the House of Representatives.

Attest: ROBIN H. CARLE,
Clerk.

Source: The United States Senate (1999).

Appendix III

Comparison of Article 73(9) in DBLSO, BLD and the Basic Law

<u>DBLSO*</u>	<u>BLD*</u>	<u>Basic Law</u>
<p>(9) In the event of serious breach of law or dereliction of duty by the Chief Executive, an independent investigating committee, to be chaired by the Chief Justice of the Court of Final Appeal, on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the council, may be established to carry out investigations and to report its findings to the council. If the committee considers the evidence sufficient, the council may pass a motion of impeachment with a two-thirds majority and report it to the Central People's Government for decision.</p>	<p>(9) If a motion initiated jointly by one-fourth of the members of the Legislative Council accuses the Chief Executive of serious breach of law or dereliction of duty and if he/she still refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigating committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient, the Council may pass a motion of impeachment by a two-thirds majority and report it to the Central People's Government for decision; and</p>	<p>(9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and</p>

Note: * In both DBLSO and BLD, the corresponding article was Article 72(9).

Remarks: DBLSO: the Draft Basic Law for Solicitation of Opinions.

BLD: the Basic Law (Draft) of the HKSAR.

References

Books and reports

1. Bazan, E. B. (2003) *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*. In Kuo, M. E. (ed.) *Impeachment: An Overview of Constitutional Procedures and Practices*. New York, Nova Science Publishers, Inc.
2. Berger, R. (1973) *Impeachment: The Constitutional Problems*. London, Harvard University Press.
3. Black, C. L. (1974) *Impeachment: A Handbook*. New Haven & London, Yale University Press.
4. Bowman, F. O. & Sepinuck, S. L. (1999) "High Crimes and Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment. *South California Law Review*. 72, pp. 1517-98.
5. Cabinet Office. (2005) *Ministerial Code: A Code of Ethics and Procedural Guidance for Ministers*. Available from: http://www.cabinetoffice.gov.uk/propriety_and_ethics/ministers/ministerial_code/ [Accessed 6 December 2005].
6. Ehrlich, C. P. & Kang, D. S. (2002) Independence and Corruption in Korea. *Columbia Journal of Asian Law*, 16(1) pp. 1-68.
7. *Erskine May Parliamentary Practice*. (1976) 19th ed. London, Butterworths.
8. *Erskine May Parliamentary Practice*. (2004) 23rd ed. LexisNexis UK.
9. Fennell, P. & Thomas, P. A. (1983) Corruption in English and Wales: An Historical Analysis. *International Journal of the Sociology of Law*. 11, pp. 167-89.
10. Fisher, L. (2003) *American Constitutional Law*. 5th ed. Durham, North Carolina, Carolina Academic Press.
11. Freedman, E. M. (1992) The Law as King and the King as Law: Is a President Immune from Criminal Prosecution before Impeachment? *Hastings Constitutional Law Quarterly*, 20(7) pp. 7-68.
12. Gay, O. (2004) Impeachment. House of Commons Standard Note, SN/PC/2666. Available from: <http://www.parliament.uk/commons/lib/research/notes/snpc-02666.pdf> [Accessed 6 December 2005].

-
13. Gay, O. & Powell T. (2004) The Collective Responsibility of Ministers: An Outline of the Issues. House of Commons Research Paper 04/82. Available from: <http://www.parliament.uk/commons/lib/research/rp2004/rp04-082.pdf> [Accessed 6 December 2005].
 14. Gerharht, M. J. (1999) The Historical and Constitutional Significance of the Impeachment and Trial of President Clinton. *Hofstra Law Review*, 28, pp. 349-92.
 15. Gerhardt, M. J. (2000) *The Federal Impeachment Process: A Constitutional and Historical Analysis*. 2nd ed. Chicago, The University of Chicago Press.
 16. Halstead, T. J. (2005) An Overview of the Impeachment Process. CRS Report for Congress.
 17. Johnson, C. A. & Brickman, D. (2001) *Independent Counsel: The Law and the Investigations*. Washington D. C., Congressional Quarterly Inc.
 18. Johnson, D. T. (2004) The Prosecution of Corruption in South Korea. In: Ginsburg, T. *Legal Reform in Korea*. New York, Routledge, Curzon, pp. 47-71.
 19. Kada N. (2003) Comparative Presidential Impeachment: Conclusions. In Baumgartner J. C. & Kada, N. (ed.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Westport, Connecticut, Praeger.
 20. Kinkopf, N. (2000) The Scope of "High Crimes and Misdemeanors" After the Impeachment of President Clinton. *Law and Contemporary Problems*. 63, pp. 201-21.
 21. Lanham, D. (1987) Bribery and Corruption. In: Smith, P. (ed.) *Criminal Law: Essays in Honour of J. C. Smith*. London, Butterworths
 22. Lee, Y. (2005) *Law, Politics, and Impeachment: The Impeachment of Roh Moo-hyun from a Comparative Constitutional Perspective*. New York University Public Law and Legal Theory Workings Papers. Year 2005, Paper 4. Available from: <http://lsr.nellco.org/cgi/viewcontent.cgi?article=1003&context=nyu/plltwp> [Accessed 6 December 2005].
 23. Mackenzie, G. C. (2002) *Scandal Proof: Do Ethics Laws Make Government Ethical?* Washington D. C., Brookings Institution Press.
 24. McWalters, I. (2003) *Bribery and Corruption Law in Hong Kong*. Hong Kong, LexisNexis, Butterworths.
-

-
25. Perkins, W. B. (2003) *The Political Nature of Presidential Impeachment in the United States*. In Baumgartner J. C. & Kada, N. (ed.) *Checking Executive Power: Presidential Impeachment in Comparative Perspective*. Westport, Connecticut, Praeger.
 26. Posner, R. A. (1999) *An Affair of State: The Investigation, Impeachment and Trial of President Clinton*. US, the President and Fellows of Harvard College.
 27. Powell, T. (2004) Confidence Motions. House of Commons Standard Note, SN/PC/2873. Available from: <http://www.parliament.uk/commons/lib/research/notes/snpc-02873.pdf> [Accessed 6 December 2005].
 28. Price, A. (2004) A Case to Answer: A First Report on the Potential Impeachment of the Prime Minister for High Crimes and Misdemeanours in relation to the Invasion of Iraq. Available from: <http://www.impeachblair.org/> [Accessed 6 December 2005].
 29. Ripy, T. B. (2003) Standard of Proof in Senate Impeachment Proceedings. In Kuo, M. E. (ed.) *Impeachment: An Overview of Constitutional Procedures and Practices*. New York, Nova Science Publishers, Inc.
 30. Secretariat of the Consultative Committee for the Basic Law of the Hong Kong Special Administration Region of the People's Republic of China. (1989) *Reference Papers for the Basic Law of the Basic Law of the Hong Kong special Administration Region of the People's Republic of China (Draft)*.
 31. The Committee of the Judiciary of the House of Representatives. (1974) *Impeachment Inquiry Staff Report: Constitutional Grounds for Presidential Impeachment*.
 32. The Home Office. (2003) Corruption Draft Legislation. Available from: <http://www.archive2.official-documents.co.uk/document/cm57/5777/5777.pdf> [Accessed 6 December 2005].
 33. The Law Commission. (1998) *Legislating the Criminal Code: Corruption*. Available from: [http://www.lawcom.gov.uk/docs/lc248\(1\).pdf](http://www.lawcom.gov.uk/docs/lc248(1).pdf) [Accessed 6 December 2005].
 34. The United States Senate. (1999) *Impeachment of President William Jefferson Clinton, Constitutional Provisions; Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials; Articles of Impeachment Against President William Jefferson Clinton; President Clinton's Answer; and Replication of the House of Representatives*. S. Doc. 106-2. Available from: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_documents&docid=f:sd002.pdf [Accessed 6 December 2005].
-

35. Turner, J. W. (1964) *Russell on Crime*. 12th ed. London, Stevens & Sons.
36. Van Tassel, E. F. & Finkelman, P. (1999) *Impeachable Offences: A Documentary History from 1787 to the Present*. Washington D. C., Congressional Quarterly Inc.
37. Winstone R. (2003) Corruption: Draft Legislation. House of Commons Standard Note, SN/PC/2059. Available from: <http://www.parliament.uk/commons/lib/research/notes/snpc-02059.pdf> [Accessed 6 December 2005].

LegCo paper

38. "Application of Prevention of Bribery Provisions to the Chief Executive" LC Paper No. CB(2)1448/00-01(02). Available from: <http://www.legco.gov.hk/yr00-01/english/panels/ca/papers/b1448e02.pdf> [Accessed 9 December 2005].
39. "Application of certain provisions of Prevention of Bribery Ordinance to the Chief Executive" LC Paper No. CB(2)1091/04-05(01). Available from: <http://www.legco.gov.hk/yr04-05/english/panels/ca/papers/ca0321cb2-1091-1e.pdf> [Accessed 9 December 2005].
40. "Proposal to apply certain provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive" LC Paper No. CB(2)195/05-06(02). Available from: http://www.legco.gov.hk/yr05-06/english/panels/ca/ca_ce/papers/cace1101cb2-195-2e.pdf [Accessed 9 December 2005].
41. "Proposal to apply certain provisions of the Prevention of Bribery Ordinance to the Chief Executive" LC Paper No. CB(2)691/05-06(01). Available from: http://www.legco.gov.hk/yr05-06/english/panels/ca/ca_ce/papers/cace1219cb2-691-1e.pdf [Accessed 14 December 2005].