

CSO/ADM CR1/1806/99(08) Pt. 42
LS/B/25/06-07
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BY FAX & BY POST
10 June 2008

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for Administration's Office
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Dear Miss MAK,

Prevention of Bribery (Amendment) Bill 2007

Thank you for your letter of 2 June 2008.

In your letter it is stated that it is not certain that the proposed section 31AA or BL 73(9) would provide "lawful authority" for the LegCo Members to make such disclosure. In view of the Bills Committee's general concern and the importance for the LegCo Members to discharge their constitutional functions under BL 73(9), the Administration agrees that there is a need to provide express immunity for the disclosure of information in the SJ's referral by the LegCo Members in those cases mentioned in new section 31AB of the revised Committee Stage amendments submitted to the Bills Committee for discussion on 20 May (*LC Paper No. CB(2)2114/07-08(01)*).

At the Bills Committee meeting on 30 May 2008, grave concern was expressed by a member on the approach taken in the new section 31AB and the need for the new section. In order to address the concern, it is proposed that consideration be given to provide the express immunity with the following approach -

"30(2A) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where -

- (a) any information disclosed under section 31AA(2) is disclosed to the staff of the Legislative Council Secretariat for the purposes of Article 73(9) of the Basic Law; or

- (b) a motion has been initiated jointly by one fourth of all the Members of the Legislative Council under Article 73(9) of the Basic Law charging the Chief Executive with serious breach of law or dereliction of duty."

A further and related concern is over the proposed amendment to proposed section 31AA(2), which seek to delete "Legislative Council for it" and substituting "Members of the Legislative Council for them". Provided that express immunity is provided to the staff of the LegCo Secretariat in the terms of the suggested section 30(2A)(a), there will not be any issue of whether the referral to the Legislative Council would in practice risk unauthorised disclosure to LegCo Secretariat staff.

The Administration explains in paragraph 11 of the LegCo Brief that the proposed new section 31AA ensures that the Secretary of Justice would not be prevented by section 30 of the POBO from referring corruption complaints against the CE and the findings of ICAC's investigation to LegCo. In view of the continuing concern of members over section 31AA, the Administration may wish to re-consider whether, instead of the empowering provision in proposed new section 31AA(2), express immunity may be provided for the Secretary for Justice, say within the suggested section 30(2A).

I should be grateful for your response as soon as practicable so that the Bills Committee may further consider the matter as necessary.

Yours sincerely,

(Arthur CHEUNG)
Senior Assistant Legal Adviser

c.c. Clerk to Bills Committee

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