

政府總部
香港下亞厘畢道



GOVERNMENT SECRETARIAT
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HONG KONG

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11 June 2008

Mr Arthur Cheung
Senior Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Cheung,

Prevention of Bribery (Amendment) Bill 2007

Thank you for your letter of 10 June on the above subject.

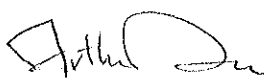
As explained to the Bills Committee before, the purpose and effect of the prohibition on disclosure under section 30(1) of the Prevention of Bribery Ordinance (POBO) is to protect the integrity of investigation into a corruption complaint by the Independent Commission Against Corruption (ICAC) when it is in its covert stage and also to protect the reputation of the person who is subject to investigation, as the investigation is embarked on mere suspicion which may be later found to be unsubstantiated. In view of this restriction, when information is received by the Secretary for Justice (SJ) on an investigation in respect of a bribery offence involving the Chief Executive (CE) as the suspect, the SJ cannot refer the matter to the Legislative Council (LegCo) Members for them to consider whether to take any action under Article 73(9) of the Basic Law (BL) without being at risk of contravening section 30(1) of POBO. We have therefore **proposed** to add the **new section 31AA** to provide that when, upon investigation by the ICAC, there is reason to suspect that the CE may have committed an offence under the POBO, the Commissioner, ICAC may refer the matter to the SJ; and where, as a result of such a referral, the SJ has reason to suspect that the CE may have committed an offence under the POBO, he may refer the matter to the LegCo for it to consider whether to take any action under BL 73(9).

In response to Bills Committee Members' general concern about immunity for the disclosure of information in the SJ's referral, we have **further proposed** the **new section 31AB** which aims to exempt the following types of disclosure from the restriction under section 30:

- (a) (**Once** the impeachment proceedings under BL 73(9) have been initiated, i.e. one-fourth of all the LegCo Members have initiated a motion to charge the CE with serious breach of law or dereliction of duty), **disclosure** of information in the SJ's referral **by any party**; and
- (b) (**Before** the impeachment proceedings under BL 73(9) have been initiated), disclosure of information in the SJ's referral by (i) a LegCo Member to Secretary General, LegCo (SG) and (ii) by SG to staff members of the LegCo Secretariat.

We consider that the proposed immunity in the new section 31AB has already struck the **right** balance between protecting the integrity of the ICAC's investigation etc and facilitating the LegCo Members in discharge of their constitutional function under BL 73(9). The scope of your proposed section 30(2A) as described in paragraph 3 of your letter dated 10 June 2008 is wider than that proposed in the new section 31AB and could thus undermine the effectiveness of the disclosure prohibition contained in section 30 and put the integrity of the ICAC's investigation at risk. For example, the proposed section 30(2A)(a) provides that the prohibition under section 30 will cease once any information in the SJ's referral has been disclosed to the staff members of the LegCo Secretariat, which could take place **well before** the impeachment proceedings are initiated.

Yours sincerely,


(Arthur Au)

for Director of Administration

c.c.

Clerk to Bills Committee (Attn.: Ms Mary So)