

CSO/ADM CR 1/1806/99(00) Pt. 5

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13 June 2000

Mrs Percy Ma
Clerk to Panel
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mrs Ma,

Legislative Council Panel on Constitutional Affairs

**Application of Certain Provisions of the
Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive**

Thank you for your letter of 16 May 2000, inviting the Administration to provide a response to the views expressed by Members of the Panel and the Legal Adviser to LegCo expressed at the Legislative Council (LegCo) Panel on Constitutional Affairs (the Panel) on 15 May 2000 regarding the application of the common law offence concerning the bribery of, and the acceptance of bribes by, public officers (the common law offence of bribery) to the Chief Executive (CE). I would like to set out below the Administration's response to those issues.

Relevant Cases

At the Panel meeting on 15 May 2000, the Legal Adviser to LegCo pointed out that the *Whitaker's* case quoted by the Administration regarding the common law offence of bribery is not the latest case on the issue. According to the Legal Adviser to LegCo, the latest case on the subject should be the case of *R v Bowden (1996) 1 WLR 98*.

In this regard, the Administration was in fact aware of the case cited by the Legal Adviser to LegCo. Nevertheless, while the case also

involved discussion regarding the definition of “public officer”, it was not a case concerning the common law offence of bribery, but rather a separate common law offence of misconduct in public office. The case referred to, and applied, a definition of “public officer” that was derived from an 1828 case and from the *Whitaker’s* case. It did not expand upon or supplement the definition of “public officer” in the *Whitaker’s* case. It is, therefore, not directly relevant to our discussion on the common law offence of bribery.

Codification of the Common Law Offence of Bribery

At the Panel meeting held on 15 May 2000, the question as to whether the common law offence of bribery should be codified was raised. Since this issue is a complicated one, the Administration would need more time to consider it. We shall revert to the Panel as soon as possible after we have come to a view on this matter.

Nevertheless, as the Administration has mentioned in its paper presented to this Panel on 15 May 2000, the Administration will start to prepare the necessary legislative amendments to extend the existing section 10 of the POBO to include the CE. The Administration aims to put forward the proposal and introduce the legislation as soon as possible.

Yours sincerely,

(P. C. Leung)
for Director of Administration