

**立法會**  
**Legislative Council**

Ref : CB2/BC/12/06

LC Paper No. CB(2)1376/07-08  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
Prevention of Bribery (Amendment) Bill 2007**

**Minutes of the 5<sup>th</sup> meeting  
held on Friday, 29 February 2008, at 8:30 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Jasper TSANG Yok-sing, GBS, JP (Chairman)  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon Martin LEE Chu-ming, SC, JP  
Dr Hon LUI Ming-wah, SBS, JP  
Hon Margaret NG  
Hon CHEUNG Man-kwong  
Hon Howard YOUNG, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon LI Kwok-ying, MH, JP  
Hon WONG Ting-kwong, BBS  
Hon Ronny TONG Ka-wah, SC  
Hon KWONG Chi-kin  
Hon Mrs Anson CHAN, GMB, JP
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS  
Dr Hon YEUNG Sum, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Daniel LAM Wai-keung, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Albert Jinghan CHENG, JP

**Public Officers :** Item I  
**attending**

Miss Jennifer MAK  
Director of Administration  
Administration Wing, Chief Secretary for Administration's Office

Miss Shirley YUNG  
Deputy Director of Administration  
Administration Wing, Chief Secretary for Administration's Office

Mr Ian McWalters  
Deputy Director of Public Prosecutions  
Department of Justice

Mr Llewellyn MUI  
Senior Government Counsel  
Department of Justice

Ms Monica LAW  
Senior Assistant Law Draftsman  
Department of Justice

**Clerk in** : Miss Mary SO  
**attendance** Chief Council Secretary (2) 5

**Staff in** : Mr Arthur CHEUNG  
**attendance** Senior Assistant Legal Adviser 2

Ms Amy YU  
Senior Council Secretary (2) 3

Ms Sandy HAU  
Legislative Assistant (2) 5

---

Action

**I. Meeting with the Administration**  
(*LC Paper Nos. CB(2)1215/07-08(01) to (02) and CB(2)1237/07-08(01)*)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Acceptance of gifts by the Chief Executive

2. The Chairman said that although the Register for recording all gifts of an

Action

estimated value exceeding HK\$400 presented to the Chief Executive (CE) in his official capacity was available for public inspection upon request and through CE's website, it was questionable how widely members of the public were aware of the existence of the Register. In the light of this, the Chairman urged the Administration to explore ways to raise better public awareness of the existence of the Register.

Admin

3. Deputy Director of Administration (Deputy D of Adm) responded that the existing arrangements in relation to the acceptance and disposal of gifts to CE had been disclosed at the open meetings of the Panel on Constitutional Affairs (CA Panel) and its Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to CE (the Subcommittee). Nevertheless, the Administration would examine whether, and if so, how these arrangements could be made more transparent.

4. Mr CHEUNG Man-kwong said that one way to raise better public awareness of the Register for recording the acceptance and disposal of gifts to CE was for the Administration to disseminate information in this regard to the media on a regular basis, say, every three months.

5. Director of Administration (D of Adm) responded that she did not see the case for Mr CHEUNG's suggestion as the media was well aware of the existence of the Register which had been established by CE's Office since 1997. It would be easy for media organisations to approach CE's Office to inspect the Register and report on its content.

Admin

6. Mrs Anson CHAN requested the Administration to check, apart from making known to the CA Panel and its Subcommittee, whether it had taken other action to publicise the arrangements in relation to the acceptance and disposal of gifts to CE; and if so, what it was. Deputy D of Adm undertook to check and report back to members later.

Section 8(1) of the Prevention of Bribery Ordinance

7. Mr Martin LEE and Mr CHEUNG Man-kwong disagreed with the Administration's view that to provide an offence provision similar to section 8(1) of the Prevention of Bribery Ordinance (POBO) in the Bill to bind persons offering advantages to CE would be too onerous on well-meaning citizens offering souvenirs to CE out of courtesy or respect, as the intent of section 8(1) was to prevent people from offering advantages or gifts to a prescribed officer for a corrupt purpose and not to prevent people from offering souvenirs of little or no perceived commercial value, such as a basket of fruits, to a prescribed officer out of courtesy or respect. Moreover, the decision on whether to initiate prosecution against the offeror lay in the Secretary for Justice (SJ). Mr LEE further said that as it was very difficult to prove that an advantage or a gift had been offered to CE for any purpose related to his duties or for a corrupt purpose, given that CE was

Action

head of the Hong Kong Special Administrative Region (HKSAR) Government, providing an offence provision similar to section 8(1) to bind persons offering advantages to CE was necessary.

8. D of Adm and Deputy Director of Public Prosecutions (DDPP) responded as follows -

- (a) as the scope of the new offence for offering advantages to CE without lawful authority or reasonable excuse was much wider than the scope of the offence created by the existing section 8(1), which covered only the department in which the prescribed officer was employed, much discretion had to be exercised by SJ in deciding whether or not to initiate prosecution. This was contrary to a very important part of Hong Kong's constitutional law, which was the concept of certainty in the criminal law; and
- (b) if a gift were offered to CE for a corrupt purpose, this should fall within the scope of proposed section 4(2A) in the Bill, which provided that if a person, whether in Hong Kong or elsewhere, offered an advantage to CE without lawful authority or reasonable excuse, as an inducement to or reward for or otherwise on account of his acting in his capacity as CE, he would commit an offence. The term "act" in the proposed section 4(2A) should be broadly construed as encompassing more than just a quid pro quo situation, but also generalised and non-specific transactions. Many offers of advantages to CE in circumstances where there was a conflict of interest should be caught under proposed section 4(2A). In addition, a person offering a bribe to CE would also be caught by the common law offence of bribery.

9. Mr Martin LEE pointed out that to exclude people offering advantages to CE from the Bill was double standard, and would send a wrong message to the public that it was legal for CE to accept gifts from the public whereas this was not the case for public servants. For instance, a person would commit an offence under section 8(1) for offering a homemade scarf to a Police officer in the winter out of kindness, whereas this would not constitute an offence under POBO if the same offer was made to CE.

10. The Chairman commented that as there were other provisions in POBO and in the Bill making it an offence for any person to offer advantages or gifts to public servants and CE respectively for corruption purpose, consideration could be given to removing section 8(1) from POBO to remove the differential treatment in offering gifts to CE and public servants. In view of unspecified criminality of section 8(1) and having regard to the fact that the public was now well educated on the legal consequence of offering advantages to a prescribed officer employed in a government department, Mr Martin LEE said that it was timely to abolish

Action

section 8(1).

11. D of Adm responded that not all provisions in POBO and in the Bill applied to all types of public servants, which included, amongst others, prescribed officers and employees of a public body. Cases in point were section 3 and proposed section 10 of POBO. D of Adm further said that to create an offence similar to that created by section 8(1) to stipulate that any person who, without lawful authority or reasonable excuse, while "having dealings of any kind with the Government", offered any advantage to CE, would be guilty of an offence would alter the inherent design of section 8(1) in that the scope of the new offence would be much wider than the scope of the offence created by section 8(1) which covered only the department in which the prescribed officer was employed.

12. Mr Martin LEE enquired whether the prescribed officer referred to in section 8(1) included the Chief Secretary for Administration (CS), having regard to the fact that one of the reasons for not creating an offence similar to section 8(1) to bind people offering gifts to CE was because CE was not concerned with any particular government department. Specifically, Senior Assistant Legal Adviser 2 asked whether section 8(1) would apply to CS if the concerned offeror had dealings with the Transport Department (TD).

13. In response, DDPP said that although CS was a prescribed officer according to the definition of "prescribed officer" in POBO, he did not think that in relation to the offering by a person having dealings with TD, CS would be included in the prescribed officer referred to in section 8(1) (i.e. CS should not be regarded as "employed in TD"). DDPP stressed that as there was no case law on what was meant by "employed in that department, office or establishment of the Government" referred to in section 8(1), his view on CS not being included in section 8(1) was merely his own interpretation.

14. Mrs Anson CHAN said that if CS was not included in section 8(1), policy secretaries should also be excluded as they strictly speaking were not employed in those departments, offices or establishments of the Government they oversaw.

15. DDPP responded that in his view, policy secretaries could, given their responsibilities, well be said to be employed in a particular department of the Government, although they were not employed by that department. DDPP pointed out that section 8 had two subsections. Subsection (1) dealt with any prescribed officer employed in a department of the Government, whereas subsection (2) dealt with any public servant employed by a public body. In view of such deliberate difference in the drafting of subsections (1) and (2) of section 8, it was arguable that a person could be employed in a department without being employed by that department.

Action

16. The Chairman pointed out that according to the Chinese version of section 8 of POBO, the characters "受僱於" were used to refer to the words "employed in" and "employed by" in the English version of subsections (1) and (2) of that section respectively.

Provision of further information after making referral

Admin

17. At the request of Ms Audrey EU, D of Adm agreed to consider whether there was a need to make it clearer in the Bill what the word "matter" in the phrase "may refer the matter" in proposed section 31AA would cover and revert in writing.

Section 30 of POBO

Admin

18. Members noted the Administration's intention to explicitly provide in the Bill that Members of the Legislative Council might disclose the information contained in SJ's referral to relevant parties if such disclosure was reasonably necessary for the purpose of taking action under Article 73(9) of the Basic Law. The draft Committee Stage amendments would be submitted to the Bills Committee for consideration as soon as practicable.

**II. Date of next meeting**

19. Members agreed to hold the next meeting on 19 March 2008 at 8:30 am to meet with deputations and to continue discussion with the Administration on the Bill.

20. There being no other business, the meeting ended at 10:04 am.

Council Business Division 2  
Legislative Council Secretariat  
18 March 2008

**Proceedings of the fifth meeting of the  
Bills Committee on Prevention of Bribery (Amendment) Bill 2007  
on Friday, 29 February 2008, at 8:30 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000440	Chairman	Opening remarks	
000441 - 001013	Admin	Briefing by the Administration on its responses to information requested by the Bills Committee at previous meetings (LC Paper No. CB(2)1215/07-08(01))	
001014 - 001851	Chairman Admin Mr CHEUNG Man-kwong	Existing arrangements on the acceptance and disposal of gifts to the Chief Executive (CE)  The Administration's response that it would examine whether, and if so, how these arrangements could be made more transparent	✓ (Admin to provide a written response)
001852 - 002357	Miss Margaret NG Chairman	Progress of scrutiny of the Bill	
002358 - 002525	Mrs Anson CHAN Admin Chairman	The Administration was requested to check, apart from making known to the Panel on Constitutional Affairs and its Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to CE, whether it had taken other action to publicise the arrangements in relation to the acceptance and disposal of gifts to CE; and if so, what it was	✓ (Admin to provide a written response)
002526 - 003041	Mr LI Kwok-ying Admin Chairman	Handling of gifts received by CE on behalf of the Hong Kong Special Administrative Region Government	
003042 - 003412	Mr Howard YOUNG Admin Chairman	Valuation of gifts for purchase by CE	
003413 - 011544	Mr Martin LEE Admin Mr CHEUNG Man-kwong Chairman SALA2 Mrs Anson CHAN	Providing an offence provision similar to section 8(1) of the Prevention of Bribery Ordinance to bind persons offering advantages to CE	
011545 - 011627	Chairman Admin	Timing of providing draft Committee Stage amendments to the Bill	
011628 - 013110	SALA2 Admin Ms Audrey EU Chairman Mr CHEUNG Man-kwong	Provision of further information after making referral  The Administration was requested to consider whether there was a need to make it clearer in the Bill what the word "matter" in the phrase "may refer the matter" in proposed section 31AA would cover	✓ (Admin to provide a written response)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
013111 - 013404	Chairman Mr CHEUNG Man-kwong Mrs Anson CHAN	Inviting public views and meeting with deputations at the next meeting	

Council Business Division 2  
Legislative Council Secretariat  
18 March 2008