

立法會
Legislative Council

Ref : CB2/BC/12/06

LC Paper No. CB(2)2159/07-08
(These minutes have been seen by
the Administration)

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

**Minutes of the 8th meeting
held on Monday, 19 May 2008, at 5:30 pm
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
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Albert Jinghan CHENG, JP
Hon Mrs Anson CHAN, GMB, JP

Members attending : Hon Alan LEONG Kah-kit, SC
Hon TAM Heung-man

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Kwok-ying, MH, JP
Hon KWONG Chi-kin

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

Staff in attendance : Mr Arthur CHEUNG
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)1969/07-08(01) and CB(2)2002/07-08(01)*)

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

Admin

2. At the request of Ms Emily LAU, the Administration undertook to provide information in writing on the types of assets required to be disclosed under paragraph 2 of Article 47 of the Basic Law (BL) and whether there was any legal

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requirement for CE to disclose his assets in his capacity as the President of the Executive Council.

Admin

3. Senior Assistant Legal Adviser 2 (SALA2) advised that as invoking the impeachment procedure under BL 73(9) required a motion initiated jointly by one-fourth of all Members of the Legislative Council (LegCo), it was unclear whether new sections 31AA and 31AB could cover individual LegCo Members considering whether to initiate the motion. The Administration explained that by virtue of BL 67, "Legislative Council" should include "Legislative Council Members" but agreed to consider the SALA2's views further.

4. As it was inevitable that details of the charges against CE would be set out in the initiating motion under BL 73(9), the Chairman asked whether LegCo or the Members jointly initiating the motion would not be committing an offence under section 30 of the Prevention of Bribery Ordinance (Cap. 201) (POBO). The Chairman further asked whether Members debating the initiating motion at a Council meeting, which was held in public, would also not be committing an offence under section 30 of POBO.

Admin

5. The Administration replied that disclosing the subject or details of investigation in respect of a POBO offence for the purpose of invoking the impeachment procedures under BL 73(9) was within the meaning of reasonable excuse under section 30 of POBO. Moreover, the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) protected LegCo Members against any civil or criminal proceedings for words spoken before or written in a report to the Council or a committee of the Council. The Administration was requested to consider whether there was a need to provide immunity for disclosure after invoking the impeachment proceedings.

Admin

6. SALA2 pointed out that Cap. 382 was not applicable to LegCo Secretariat staff for disclosure of information concerning the subject or details of investigation in respect of a POBO offence for the purpose of invoking the impeachment procedures under BL 73(9). He suggested that reference be made to section 21(4) of the Official Secrets Ordinance (Cap.521) which provided that "It is a defence for a person charged with an offence under any of sections 13 to 20 to prove that at the time of the alleged offence he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise." The Administration agreed to consider and revert in writing.

Admin

7. The Administration also undertook to provide a response in writing to the following issues raised by SALA2 -

- (a) to ascertain whether new section 31AB was within the scope of the Bill, having regard to the long title of the Bill; and
- (b) to consider whether the "reasonably necessary" requirement for

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disclosure of information should apply to subsection (1), as in the case of subsections (2) and (3) of new section 31AB.

8. Members agreed that the persons who might be affected by new section 31AB should be consulted.

II. Date of next meeting

9. The next meeting would be held on 27 May 2008 at 4:30 pm.

(Post meeting note: The next meeting would be held on 30 May 2008 at 3:00 pm or immediately after the meeting of the House Committee held on that day, whichever was later.)

10. There being no other business, the meeting ended at 7:15 pm.

Council Business Division 2
Legislative Council Secretariat
4 June 2008

**Proceedings of the eighth meeting of the
Bills Committee on Prevention of Bribery (Amendment) Bill 2007
on Monday, 19 May 2008, at 5:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 001033	Chairman Admin	The Administration's response to members' concern about possible public perception that the Independent Commission Against Corruption (ICAC) might not conduct its investigation into a corruption complaint against the Chief Executive (CE) independently and impartially [LC Paper No. CB(2)1969/07-08(01)]	
001034 - 001141	Chairman	Outstanding response from the Administration on how the arrangements for the acceptance and disposal of gifts to CE could be made more transparent	
001142 - 001519	Chairman Admin Ms Emily LAU	<u>Clause-by-clause examination of the Bill</u> Long title	
001520 - 002824	Ms Emily LAU Admin Chairman SALA2	Provisions of the Prevention of Bribery Ordinance (Cap. 201) (POBO) as amended by the Bill which were not applicable to CE	
002825 - 002848	Admin	Clause 1 - Short title	
002849 - 002920	SALA2 Ms Emily LAU Admin	The Bill, if enacted, would come into effect on the date of gazettal	
002921 - 003114	Chairman Admin	Clause 2 - Bribery	
003115 - 003240	Chairman Admin	Clause 3 - Bribery for giving assistance, etc. in regard to contracts	
003241 - 003520	Chairman Admin	Clause 4 - Possession of unexplained property	
003521 - 003700	Ms Emily LAU Admin Chairman	Administration's clarification that the proposed section 10(1) would apply to every previous CE	
003701 - 004001	Mrs Anson CHAN Chairman Admin	The suggestion of expanding the definition of "public servant" and "prescribed officer" under POBO to cover CE	
004002 - 004840	Ms Emily LAU Admin Chairman Mrs Anson CHAN	Examination of the proposed section 10(1B) under clause 4(2) The Administration to provide information in writing on the the types of assets required to be disclosed under paragraph 2 of Article 47 of the Basic Law (BL) and whether there was any legal requirement for CE to disclose his assets in his capacity as the President of the Executive Council	✓ (Admin to provide a written response)
004841 - 005045	Chairman Admin	Clause 5 - Referral provision	

Time marker	Speaker	Subject	Action required
005046 - 005915	Ms Emily LAU Admin Chairman SALA2	Whether there was any sequence for conducting criminal proceedings and impeachment proceedings in respect of alleged corruption offences involving CE	
005916 - 010306	Mrs Anson CHAN Admin Ms Emily LAU	Whether Commissioner, ICAC and Secretary for Justice (SJ) were required to give the reason(s) for not referring a corruption complaint against CE to SJ and the Legislative Council respectively	
010307 - 011042	Chairman SALA2 Admin Ms Emily LAU	The Administration to revert in writing on whether new sections 31AA and 31AB could cover individual LegCo Members considering whether to initiate the motion for invoking the impeachment procedure under BL 73(9)	✓ (Admin to provide a written response)
011043 - 011803	Chairman Admin SALA2	Committee Stage amendments (CSAs) proposed by the Administration to address Members' concern about the need to provide in POBO immunity to Legislative Council Members for disclosure of information received under new section 31AA [LC Paper CB(2)1969/07-08(01)] The Administration to provide a written response to the following issues – (a) to ascertain whether new section 31AB was within the scope of the Bill, having regard to the long title of the Bill; and (b) to consider whether the "reasonably necessary" requirement for disclosure of information should apply to subsection (1), as in the case of subsections (2) and (3) of new section 31AB.	✓ (Admin to provide a written response)
011804 - 012934	Ms Emily LAU Admin Chairman SALA2	Whether Members jointly initiating a motion under BL 73(9) or debating the initiating motion at a Council meeting would be committing an offence under section 30 of POBO The Administration was requested to consider whether there was a need to provide immunity for disclosure after invoking the impeachment proceedings	✓ (Admin to provide a written response)
012935 - 013147	SALA2	Pointed out that Cap. 382 was not applicable to LegCo Secretariat staff for disclosure of information concerning the subject or details of investigation in respect of a POBO offence for the purpose of invoking the impeachment procedures under BL 73(9) and suggested that reference be made to section 21(4) of the Official Secrets Ordinance (Cap.521). The Administration agreed to consider and revert in writing	✓ (Admin to provide a written response)
013148 - 013233	Chairman Ms Emily LAU Admin	The Administration's proposed CSA to clause 5 to replace "Section" with "Sections"	
013234 - 013506	SALA2 Chairman Ms Emily LAU Mrs Anson CHAN	Members agreed that the persons who might be affected by new section 31AB should be consulted	

Time marker	Speaker	Subject	Action required
013507 - 013943	Chairman Admin SALA2	Clause 6 – Other specified offences	
013944 - 014435	Chairman Ms Emily LAU Clerk	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
4 June 2008