

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of the first meeting
held on Monday, 29 October 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Jasper TSANG Yok-sing, GBS, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH, JP
Hon WONG Ting-kwong, BBS
Hon Albert Jinghan CHENG, JP
Hon KWONG Chi-kin

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Public Officers attending : Item II

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 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. Election of Chairman

Mr Jasper TSANG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

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

Admin

3. The Administration was requested to provide a response in writing to the following issues raised by members at the meeting -

- (a) comparison of the Administration's proposal to extend the coverage of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to the Chief Executive (CE) previously submitted to the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive of the Panel on Constitutional Affairs and that made under the Prevention

Action

of Bribery (Amendment) Bill 2007 (the Bill);

- (b) the extent to which the Central People's Government had been involved in the formulation of the Bill, if any;
- (c) Commissioner, Independent Commission Against Corruption (C, ICAC), should refer a corruption complaint against CE to the Legislative Council (LegCo) if he/she had reason to suspect that CE might have committed an offence under POBO, instead of referring the complaint to Secretary for Justice (SJ), in order to enable LegCo to take any action provided under Article 73(9) of the Basic Law. Alternatively, SJ should be required to make a report to LegCo on the reason(s) for not referring a corruption complaint against CE received from C, ICAC to LegCo. Details of the report should include essential facts of the complaint such as findings of ICAC's investigation; and
- (d) the need to provide in POBO immunity to LegCo Members for inadvertently disclosing information contained in SJ's referrals, made under new section 31AA, outside the proceedings of the Council and its committees.

III. Date of next meeting

- 4. Members agreed to hold the next meeting on 15 November 2007 at 4:30 pm.
- 5. There being no other business, the meeting ended at 5:49 pm.

Council Business Division 2
Legislative Council Secretariat
13 November 2007

**Proceedings of the first meeting of the
Bills Committee on Prevention of Bribery (Amendment) Bill 2007
on Monday, 29 October 2007, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000820	Mr Martin LEE Mr TAM Yiu-chung Mr Jasper TSANG Mr CHEUNG Man- kwong Dr YEUNG Sum Ms Audrey EU	Election of Chairman	
000821 - 000934	Chairman Mr Martin LEE Clerk	Withdrawal of membership of Mr Tommy CHEUNG	
000935 - 001525	Chairman Administration	Briefing on the Bill	
001526 - 002040	Chairman Ms Margaret NG Administration	Ms Margaret NG expressed reservation about the proposed new section 31AA empowering the Secretary for Justice (SJ) to refer to the Legislative Council (LegCo) a case where the Chief Executive (CE) was suspected to have committed a corruption offence for possible follow-up by LegCo (the referral provision), having regard to the fact that such a provision would run the risk of politicisation of the impeachment process provided under Article 73(9) of the Basic Law (BL 73(9)) The Administration was requested to provide a list setting out a comparison of the Administration's proposal to extend the coverage of the Prevention of Bribery Ordinance (Cap. 201) (POBO) to CE previously submitted to the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive of the Panel on Constitutional Affairs and that made under the Bill	✓ (Admin to provide written responses)
002041 - 003041	Dr YEUNG Sum Administration Chairman	Dr YEUNG Sum expressed concern that the proposed referral provision would allow SJ, a politically appointed principal official, to interfere with the impeachment mechanism in a way that would better serve the interests of the person who appointed him The Administration was requested to consider requiring the Commissioner, Independent Commission Against Corruption (C, ICAC) to refer a corruption complaint against CE to LegCo if he/she had reason to suspect that CE might have committed an offence under POBO to enable LegCo to take any action provided under BL 73(9)	✓ (Admin to provide written responses)

Time marker	Speaker	Subject	Action required
003042 - 003413	Ms Margaret NG Administration Chairman	The Administration was requested to provide information on the extent to which the Central People's Government had been involved in the formulation of the Bill, if any	✓ (Admin to provide written responses)
003414 -005108	Mr CHEUNG Man-kwong Administration Chairman	Mr CHEUNG Man-kwong concurred with Dr YEUNG Sum that it was not appropriate to involve SJ in the impeachment mechanism which was a unique constitutional role entrusted to LegCo	
005109 - 005356	Dr YEUNG Sum Administration	The Administration was also requested to consider the alternative suggestion of requiring SJ to make a report to LegCo on the reason(s) for not referring a corruption complaint against CE received from C, ICAC to LegCo. Details of the report should include findings of ICAC's investigation	✓ (Admin to provide written responses)
005357 - 005648	Mr TAM Yiu-chung	The unique constitutional position of CE posed difficulties in fitting him within the regulatory framework under POBO	
005649 - 005924	Mr KWONG Chi-kin	Considered it inappropriate for C, ICAC to refer directly a corruption complaint against CE to LegCo, considering the fact that it would not be fair to CE if SJ subsequently decided that there were insufficient grounds to institute criminal proceedings	
005925 - 010235	Mr CHEUNG Man-kwong	Differences in thresholds between the impeachment proceedings under BL 73(9) and criminal proceedings LegCo's need to have access to ICAC's investigation findings on a corruption complaint against CE for considering whether or not to institute impeachment proceedings	
010236 - 010405	Mr KWONG Chi-kin	LegCo did not have to rely on SJ's referral to obtain essential information pertaining to a corruption-related complaint against CE	
010406 - 010721	Mr CHEUNG Man-kwong Administration	Dr YEUNG Sum's proposal of requiring SJ to refer corruption complaints against CE to LegCo	
010722 -010956	Dr YEUNG Sum Mr KWONG Chi-kin	The two different grounds for instituting impeachment proceedings under BL 73(9)	
010957 - 011438	Chairman Mr CHEUNG Man-kwong Dr YEUNG Sum Administration	Requesting the Administration to provide written responses to issues raised by members at the meeting	
011439 - 011826	SALA2 Administration Chairman	The Administration was requested to provide a response to the view raised by members of the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance to the Chief Executive that LegCo	✓ (Admin to provide written responses)

Time marker	Speaker	Subject	Action required
		Members should be provided immunity for inadvertently disclosing information contained in SJ's referrals, made under the proposed new section 31AA, outside the proceedings of the Council and its committees	
011827 - 011924	Chairman	Date of next meeting	

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