

立法會
Legislative Council

Ref : CB2/BC/12/06

LC Paper No. CB(2)701/07-08
(These minutes have been seen by
the Administration)

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

**Minutes of the 3rd meeting
held on Tuesday, 4 December 2007, at 4:30 pm
in Conference Room A 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 Timothy FOK Tsun-ting, GBS, 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 Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon Albert Jinghan CHENG, JP
Hon KWONG Chi-kin
- Members absent** : Dr Hon Philip WONG Yu-hong, GBS
Dr Hon YEUNG Sum, JP
Hon Daniel LAM Wai-keung, SBS, JP

Public Officers : Item II
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

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I. Confirmation of minutes of meeting
(*LC Paper No. CB(2)478/07-08*)

The minutes of the meeting held on 15 November 2007 were confirmed.

Action

II. Meeting with the Administration

(LC Paper Nos. CB(2)480/07-08(01) and CB(2)331/07-08(01))

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

Referral of a corruption complaint against the Chief Executive

3. Assuming that the system mentioned in paragraph 10 of the Administration's paper (LC Paper No. CB(2)480/07-08(01)) could provide sufficient safeguards against any corruption complaint involving the Chief Executive (CE) being covered up, Mr CHEUNG Man-kwong was of the view that Legislative Council (LegCo) should still be informed that CE had been the subject person of a corruption complaint which the Secretary for Justice (SJ) decided not to prosecute or refer to LegCo for it to consider whether to take any action under Article 73(9) of the Basic Law (BL). Specifically, SJ should inform LegCo of such after his decision not to prosecute or refer the case to LegCo had been fully reported to and discussed at the Operations Review Committee (ORC) of the Independent Commission Against Corruption (ICAC). Mr CHEUNG pointed out that his request should not compromise SJ's constitutional function to control criminal prosecutions free from any interference under BL 63, as no details of the case nor reasons against prosecution or referral to LegCo would be sought. Neither was his request anything new, as statistics on corruption complaints against public officers, say, the Police, were commonly sought by LegCo and provided by the Administration.

4. The Administration responded as follows -

- (a) decision to prosecute CE for an offence under the Prevention of Bribery Ordinance (POBO) (Cap. 201) or refer the case to LegCo for it to consider whether to take any action under BL 73(9) was an important discretion which SJ had to exercise with great care on a case by case basis, and for which he was accountable. To require SJ to inform LegCo that CE was the subject person of a closed corruption complaint would be contradictory to his decision not to refer the case to LegCo which had been fully reported to and discussed at ORC;
- (b) moreover, it would be inappropriate for SJ to disclose the identity of the subject person of a closed corruption complaint, as to do so would infringe the subject person's privacy and undermine his reputation. This was particularly pertinent if the subject person was CE, having regard to his special constitutional status in Hong Kong; and

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- (c) the effect of disclosing statistics on corruption complaints against a particular group of public officers was different from that of disclosing that CE had been the subject person of a corruption complaint, as numerous persons belonged to the former whereas there was only one CE in Hong Kong.

Admin

5. Senior Assistant Legal Adviser 2 (SALA2) advised that as SJ might refer a corruption complaint against CE to LegCo if he merely had reason to suspect that CE might have committed an offence under POBO in accordance with new section 31AA, ICAC's investigation on the case might still be ongoing when the referral was made to LegCo. In the light of this, SALA2 sought clarification from the Administration on whether SJ would, after referring the case to LegCo, provide LegCo with further information on the case upon completion of ICAC's investigation.

6. SALA2 further advised that the referral mechanism anticipated the emergence of the detailed mechanics for the impeachment process under BL 73(9). Ms Emily LAU concurred, and agreed that local legislation might even have to be considered for its implementation. She urged the Administration to expeditiously respond to the procedural arrangements relating to the implementation of BL 73(9) proposed by LegCo's Committee on Rules of Procedure.

Application of section 3 of POBO to CE

Admin

7. Ms Emily LAU said that the spirit governing the solicitation and acceptance of advantages by prescribed officers under section 3 of POBO should also apply to CE. Section 3 of POBO prohibited any "prescribed officer" from soliciting or accepting any advantage without the general or special permission of CE. Ms LAU urged the Administration to consider the suggestion of the Hong Kong Bar Association, previously made to the Subcommittee on Application of Certain Provisions of POBO to CE formed under LegCo Panel on Constitutional Affairs, to introduce a special section or sub-section applicable to CE in POBO, and to set up an independent body to grant general or special permission for CE to accept advantages. The Administration agreed to provide a response in writing.

Disclosure of information contained in SJ's referral

Admin

8. SALA2 advised that as it was unclear whether it was lawful for LegCo Members to disclose information which fell within the scope of section 30 of POBO contained in SJ's referral in the course of discharging the constitutional function under BL 73(9), such as to LegCo Secretariat staff and during a motion debate at a Council meeting, an express provision should be added to POBO to provide immunity for LegCo Members in disclosing information contained in SJ's referral in the course of discharging the constitutional function under BL 73(9). If the Administration considered that new section 31AA was required to enable SJ

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to overcome the restriction on disclosure, an express safeguard should also be provided to LegCo Members. The Administration agreed to revert in writing.

III. Date of next meeting

9. Members agreed to hold the next meeting on 8 January 2008 at 4:30 pm.
10. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 2
Legislative Council Secretariat
2 January 2008

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

| Time marker | Speaker | Subject | Action required |
|--------------------|--|---|--|
| 000000 - 000459 | Chairman | Confirmation of minutes of meeting on 15 November 2007 | |
| 000500 - 001149 | Chairman Admin | The Administration's response on measures taken and/or would be taken to allay members' concerns about the referral mechanism in new section 31AA (LC Paper No. CB(2)480/07-08(01)) | |
| 001150 - 001326 | Mr Howard YOUNG | No change should be made to the existing practice of the Independent Commission Against Corruption (ICAC) in the handling of corruption complaints | |
| 001327 - 003320 | Mr CHEUNG Man-kwong Admin Chairman | Mr CHEUNG Man-kwong's view that Legislative Council (LegCo) should still be informed that the Chief Executive (CE) had been the subject person of a corruption complaint which the Secretary for Justice (SJ) decided not to prosecute or refer the matter to LegCo for it to consider whether to take any action under Article 73(9) of the Basic Law (BL) | |
| 003321 - 003802 | SALA2 Chairman Mr CHEUNG Man-kwong | Clarification on whether SJ would, after referring the case to LegCo, provide LegCo with further information on the case upon completion of ICAC's investigation | ✓ (Admin to provide a written response) |
| 003803 - 004626 | Mr Martin LEE Admin Mr CHEUNG Man-kwong Chairman | Questions raised by Mr Martin LEE on the operation of the Operations Review Committee (ORC) of ICAC - (a) whether ORC could pass information on a corruption complaint against CE to LegCo; and (b) whether individual ORC members could pass information to LegCo or were they bound by collective responsibility | |
| 004627 - 011853 | Ms Audrey EU SALA2 Ms Emily LAU Admin Chairman | Threshold for Commissioner, ICAC to refer a case to SJ and for SJ to refer the same to LegCo Constitutionality of interfacing new section 31AA with the impeachment mechanism under BL 73(9) when the latter was yet to be finalised | |
| 011854 - 012859 | Ir Dr Raymond HO SALA2 Ms Emily LAU Chairman | Question raised by Ir Dr Raymond HO on whether LegCo could invoke the Legislative Council (Powers and Privileges) Ordinance (Cap.382) to obtain information for the purposes of BL 73(9) | |

| Time marker | Speaker | Subject | Action required |
|-----------------|--|--|--|
| 012900 - 013937 | Ms Emily LAU Admin Chairman | The Administration was requested to consider the suggestion of the Hong Kong Bar Association, previously made to the Subcommittee on Application of Certain Provisions of the Prevention of Bribery Ordinance (POBO) to CE formed under LegCo Panel on Constitutional Affairs, to introduce a special section or subsection applicable to CE in POBO, and to set up an independent body to grant general or special permission for CE to accept advantages | ✓ (Admin to provide a written response) |
| 013938 - 015345 | SALA2 Chairman Admin Ms Emily LAU | The Administration's response on providing immunity to LegCo Members for inadvertently disclosing information contained in SJ's referral (LC Paper No. CB(2)331/07-08(01) – Part C) The Administration was requested to consider adding an express provision to POBO to provide immunity for LegCo Members in disclosing information contained in SJ's referral in the course of discharging the constitutional function under BL 73(9) | ✓ (Admin to provide a written response) |
| 015346 - 015622 | Chairman Admin | The Administration's response on the involvement of the Central People's Government in the formulation of the Bill (LC Paper No. CB(2)331/07-08(01) – Part D) | |
| 015623 - 015753 | Chairman Admin Ms Emily LAU | Date of next meeting | |

Council Business Division 2
Legislative Council Secretariat
 2 January 2008