

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

**Follow-up actions arising from the discussion  
at the Bills Committee meeting on 19 May 2008**

**Purpose**

This paper sets out the Administration's :

- (a) proposed **revised** committee stage amendments (“revised CSAs”) (*see paragraph 2 below*); and
- (b) response to issues concerning the register of gifts to the Chief Executive (CE) and the declaration of assets under Article 47(2) of the Basic Law (BL) (*see paragraphs 3 to 6 below*).

**(A) CSAs proposed by the Administration**

2. To address concerns raised by Members and Legal Adviser of the Legislative Council (LegCo), the Administration would like to propose some amendments to the CSAs which were submitted to the Bills Committee for discussion on 19 May 2008. The revised CSAs (**Annex** – with changes highlighted in revision mode), which fall within the scope of item (d) of the long title<sup>1</sup> of the Prevention of Bribery (Amendment) Bill 2007 (Amendment Bill) when read together with item (c) thereof, aim to:

Annex

*Proposed amendments to new section 31AB in the CSAs*

- (a) allow disclosure of information in the Secretary for Justice (SJ)'s referral by a LegCo Member to Secretary General, LegCo (SG) if the Member is satisfied that the disclosure is **reasonably necessary** for the purpose of enabling the **LegCo Members** to take or consider whether to take any action under

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<sup>1</sup> The long title of the Amendment Bill reads as follows:

*“Amend the Prevention of Bribery Ordinance--*

- (a) to apply to the CE the provisions of sections 4 and 5 of that Ordinance that are now applicable to prescribed officers;*
- (b) to apply to the CE section 10 of that Ordinance;*
- (c) to enable the Commissioner of the Independent Commission Against Corruption and the SJ to refer a matter involving an offence under that Ordinance suspected to have been committed by the CE to SJ and to the LegCo respectively; and*
- (d) to provide for matters connected with these purposes,*

*and to make related amendments to the Organized and Serious Crimes Ordinance.”*

BL 73(9). This “threshold” is the same as that for SG’s disclosure to staff members of the LegCo Secretariat (see item (b) below for details);

- (b) allow disclosure of information obtained under item (a) above by SG to staff members of the LegCo Secretariat provided that (i) SG is satisfied that the disclosure is reasonably necessary for the purpose of enabling the **LegCo Members** to take or consider whether to take any action under BL 73(9); and (ii) the LegCo President has given prior approval to the disclosure;
- (c) provide that when giving approval under item (b) above, the LegCo President must be satisfied that the disclosure is reasonably necessary for the purpose of enabling the **LegCo Members** to take or consider whether to take any action under BL 73(9);
- (d) **allow disclosure** of information in the SJ’s referral by any party (such as uploading the motions under BL 73(9) to the LegCo website by the staff members of the LegCo Secretariat) **once the impeachment proceedings** under BL 73(9) have been **initiated**, i.e. one-fourth of all the LegCo Members have initiated a motion to charge the CE with serious breach of law or dereliction of duty; and

*Proposed amendments to new section 31AA of the Amendment Bill*

- (e) **replace “LegCo” with “LegCo Members”** in new section 31AA(2) of the Amendment Bill.

**(B) Register of gifts**

3. The CE’s Office (CEO) has since 1997 established a register of gifts to the CE in his official capacity. The register is available for public inspection, hitherto upon request and since July 2007, through CE’s website. All gifts of an estimated value exceeding HK\$400 received by the CE in his official capacity are recorded in the register. The register is updated on a monthly basis.

4. This existing practice of making available for public inspection the register of gifts to the CE in his official capacity has been established for more than ten years, and has been specifically made known at our previous discussions with the LegCo. Upon the passage of the Amendment Bill, we plan to issue a press release explaining to members of the public the new measures to tackle bribery acts involving the CE as well as the register.

**(C) Declaration of assets under BL 47(2)**

5. Under BL 47(2), the CE, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal. The term “assets” is not specifically defined under BL. Hence, the types of assets to be disclosed should follow the ordinary meaning of “assets”. There is no legal requirement (other than that under BL 47(2)) on the disclosure of CE’s assets.

6. While there is no legal requirement for the CE to disclose his assets in his capacity as the President of the Executive Council (ExCo), he, nonetheless, furnishes a return on his registrable interests in his capacity as the ExCo President, like other ExCo Members. A register is available for public inspection through the ExCo’s website.

Administration Wing, Chief Secretary for Administration’s Office  
Department of Justice  
May 2008

PREVENTION OF BRIBERY (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Chief Secretary for Administration

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>In the English text –</p> <p>(a) in the heading, by deleting “<b>Section</b>” and substituting “<b>Sections</b>”;</p> <p>(b) by deleting “is added” and substituting “are added”.</p>
<u>5</u>	<p><u>In the proposed section 31AA(2), by deleting “Legislative Council for it” and substituting “Members of the Legislative Council for them”.</u></p>
5	<p>By adding immediately after the proposed section 31AA –</p> <p><b>“31AB. Disclosure of information received under section 31AA by Members of Legislative Council etc.</b></p> <p>(1) Notwithstanding section 30, a Member of the Legislative Council may disclose any information</p>

received under section 31AA to the Secretary General if the Member is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(2) Notwithstanding section 30, the Secretary General may, with the prior approval of the President of the Legislative Council, disclose any information received under subsection (1) to any member of the staff employed in the Legislative Council Secretariat if the Secretary General is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(3) The President of the Legislative Council shall not approve a disclosure under subsection (2) unless the President is satisfied that the disclosure is reasonably necessary for the purpose of enabling the Members of the Legislative Council to take, or to consider whether to take, any action under Article 73(9) of the Basic Law.

(4) Where in relation to a matter referred to the Members of the Legislative Council under section 31AA(2), a motion has been initiated jointly by one-fourth of all the Members of the Legislative Council

under Article 73(9) of the Basic Law charging the Chief Executive with serious breach of law or dereliction of duty, section 30 shall not apply as regards the disclosure by any person of any information relating to the matter provided by the Secretary for Justice to the Members of the Legislative Council under section 31AA(2).

(54) In this section, “Secretary General” (秘書長) has the meaning assigned to it in section 2 of The Legislative Council Commission Ordinance (Cap. 443).”.

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By deleting the clause and substituting –

**“6. Other specified offences**

(1) Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 9, by repealing –

“section 5(1) bribery for giving  
assistance, etc. in  
regard to contracts”

and substituting –

“section 4(2A) bribery of Chief  
Executive

section 4(2B) soliciting or accepting  
bribes in the capacity  
of Chief Executive

section 5(1) bribery of public servant  
for giving assistance,  
etc. in regard to  
contracts”.

(2) Schedule 2 is amended, in paragraph 9, by  
adding –

“section 5(3) bribery of Chief  
Executive for giving  
assistance, etc. in  
regard to contracts

section 5(4) soliciting or accepting  
bribes in the capacity  
of Chief Executive for  
giving assistance, etc.  
in regard to contracts”

after –

“section 5(2) soliciting or accepting  
bribes in the capacity  
of a public servant for  
giving assistance, etc.  
in regard to  
contracts”.”.