

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

**Follow-up actions arising from the discussion
at the Bills Committee meeting on 30 May 2008**

Purpose

This paper sets out the Administration's:

- (a) response to issues concerning (i) handling of information in the Secretary for Justice (SJ)'s referral, (ii) investigation of corruption complaints against the Chief Executive (CE) and (iii) types of registrable interests disclosed by the CE in his capacity as the President of the Executive Council (ExCo) (*see paragraphs 2 to 5 below*); and
- (b) proposed **further revised** committee stage amendments (further revised CSAs) (*see paragraphs 6 to 8 below*).

(A) Response to Issues

(i) Handling of information in the SJ's referral

2. As explained in the Administration's paper (*LC Paper No. CB(2)1215/07-08(01)*) submitted to the Bills Committee for discussion on 29 February, the proposed section 31AA of the Prevention of Bribery (Amendment) Bill 2007 provides that the SJ may refer a matter involving a bribery offence suspected to have been committed by the CE to the Legislative Council (LegCo) for it to consider whether to take any action under Article 73(9) of the Basic Law (BL). Enabling the SJ to refer such a matter to LegCo so that it can act upon it for this specific purpose may suggest that LegCo Members should be entitled to further disclose it pursuant to this purpose. This may allow of an argument that if they did so for the purpose of taking any action under BL 73(9) then they would have a defence of "reasonable excuse" under section 30 of the Prevention of Bribery Ordinance. It may thus be arguable that LegCo Members may, for the purpose of taking any action under BL73(9), disclose the information in the SJ's referral to other parties. However, the defence of "lawful authority" requires that the law authorizes the disclosure and because this law does not explicitly do that, it is much less arguable that the proposed section 31AA or BL 73(9) would provide "lawful authority" for the LegCo Members to make such disclosure.

3. To address Members' general concern about immunity for disclosure of information in the SJ's referral, we have proposed to add the new section 31AB which, if enacted, would provide exemption for the purpose of section 30 to LegCo Members and the Secretary General, LegCo (SG) in respect of disclosure of information in the SJ's referral. It also allows, for the purpose of section 30, disclosure of information in the SJ's referral by any party once the impeachment proceedings under BL 73(9) have been initiated, i.e. one-fourth of all the LegCo Members have initiated a motion (Initiating Motion) jointly to charge the CE with serious breach of law or dereliction of duty. The new section 31AB therefore only deals with the section 30 restriction. Such being the case, our legal advice is that the new section 31AB can hardly constitute an intervention into any LegCo proceedings whether in relation to the impeachment procedure under BL 73(9) or otherwise.

(ii) Investigation of corruption complaints against the CE

4. We remain strongly of the view that the Independent Commission Against Corruption (ICAC) is the most appropriate authority to investigate a corruption offence suspected to have been committed by the CE, after taking into account the ICAC's expertise and proven track record, the proper interpretation of BL 57 and the presence of robust safeguards to ensure the independence and integrity of investigation. Such investigation should be subject to the prevailing mechanism, just as in the case of a corruption complaint against any other member of the public. For more details, Members may wish to refer to the Administration's paper (*LC Paper No. CB(2)1969/07-08(01)*) submitted to the Bills Committee for discussion on 19 May.

(iii) Types of registrable interests

5. A register of interests of the CE, in his capacity as the President of the ExCo, is available through the ExCo's website. The types of registrable interests are as follows :

- (a) remunerated directorships in any public or private company;
- (b) remunerated employments, offices, trades, profession, etc;
- (c) names of clients (if any of the above registrable interests includes provision to clients of personal services which arise out of or relate in any manner to the position as a Member of ExCo);
- (d) land and property owned in Hong Kong or outside Hong Kong;

- (e) names of companies or other bodies in which the CE has, to his knowledge, either himself or with or on behalf of his spouse or children, a beneficial interest in shareholdings of a nominal value greater than 1% of the issued share capital; and
- (f) membership of boards, committees and other organisations which might be construed by members of the public as a declaratory interest.

(B) Further Revised CSAs

6. Through the SG, we have consulted the President of the LegCo and staff members of the LegCo Secretariat on the new section 31AB of the CSAs. The comments received are as follows:

- (a) no objection to replacing “Legislative Council” with “Members of the Legislative Council” in new section 31AA(2) of the **revised CSAs** (i.e. Annex to the Administration’s paper (*LC Paper No. CB(2)2114/07-08(01)*) submitted to the Bills Committee for discussion on 30 May); and
- (b) adding a clear provision to the Bill to provide that the point of time when an Initiating Motion is considered to have been initiated should be that as provided in the LegCo’s Rules of Procedure (RoP).

7. In the light of the views expressed by Members and Legal Adviser of the LegCo¹ as well as those comments received from SG, the Administration would make some amendments to the new section 31AB:

- (a) allow disclosure of information in the SJ’s referral by a LegCo Member to SG for the purpose of enabling the LegCo Members to take or consider whether to take any action under BL 73(9). The “threshold” of “reasonably necessary” will **not** apply to the disclosure; and
- (b) in the new section 31AB(4), replace “section 30” with “section 30(1)”, and “嚴重違法行為或瀆職行為” with “嚴重違法或瀆職行為” following the wording of BL 73(9).

¹ The LegCo Legal Adviser has also asked the Administration to consider whether it is appropriate to make reference to “section 30” instead of “section 30(1)” in the new section 31AB(4).

The English and Chinese version of the **further revised** CSAs are at **Annexes A and B** respectively with changes (when compared with the **revised CSAs**) highlighted in revision mode.

8. As regards the comments in paragraph 6(b) above, we have explained to the SG that BL 73(9) provides that one-fourth of all the LegCo Members can initiate an Initiating Motion jointly to charge the CE with serious breach of law or dereliction of duty. This provision does not specify when an Initiating Motion is considered to have been initiated. BL 75(2) provides that the rules of procedure of the LegCo shall be made by the Council on its own, provided that they do not contravene the BL. Our legal advice is that the LegCo is empowered by BL 75(2) to make its own rules of procedure, including those in relation to the impeachment proceedings under BL 73(9), such as when an Initiating Motion is considered to have been initiated. Hence, we agree with the SG that the point of time when the Initiating Motion is considered to have been jointly initiated should be that as provided in the LegCo's RoP. However, since LegCo business by nature is to be processed according to the RoP, we do not consider that there is a need to make express reference to the RoP in the new section 31AB.

Administration Wing, Chief Secretary for Administration's Office
Department of Justice
June 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 “Section” and substituting “Sections”;</p> <p>(b) by deleting “is added” and substituting “are added”.</p>
5	<p>In the proposed section 31AA(2), by deleting “Legislative Council for it” and substituting “Members of the Legislative Council for them”.</p>
5	<p>By adding immediately after the proposed section 31AA –</p> <p>“31AB. Disclosure of information received under section 31AA by Members of Legislative Council etc.</p> <p>(1) Notwithstanding section 30, a Member of the Legislative Council may disclose any information 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</p>

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(1) 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).

(5) 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).”.

6

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”. ”.

《2007年防止賄賂(修訂)條例草案》

委員會審議階段

由政務司司長動議的修正案

條次

建議修正案

- 5 在英文文本中 —
- (a) 在標題中，刪去“Section”而代以“Sections”；
- (b) 刪去“is added”而代以“are added”。
- 5 在建議的第31AA(2)條中，刪去“，讓立法會”而代以“議員，讓他們”。
- 5 在緊接建議的第31AA條之後加入 —

**“31AB. 立法會議員等披露根據
第31AA條收取的資料**

(1) 儘管第30條另有規定，立法會議員可如信納為使立法會議員能根據《基本法》第七十三條第(九)項採取任何行動，或為使立法會議員能考慮是否根據《基本法》第七十三條第(九)項採取任何行動，而有合理需要向秘書長披露任何根據第31AA條收取的資料，則可向秘書長披露該等資料。

(2) 儘管第 30 條另有規定，秘書長如信納為使立法會議員能根據《基本法》第七十三條第(九)項採取任何行動，或為使立法會議員能考慮是否根據《基本法》第七十三條第(九)項採取任何行動，有合理需要向任何受僱於立法會秘書處的職員披露任何根據第(1)款收取的資料，則秘書長可在得到立法會主席事先批准下，向該職員披露該等資料。

(3) 立法會主席除非信納為使立法會議員能根據《基本法》第七十三條第(九)項採取任何行動，或為使立法會議員能考慮是否根據《基本法》第七十三條第(九)項採取任何行動，有合理需要根據第(2)款作出某項披露，否則不得批准該項披露。

(4) 凡立法會全體議員的四分之一已根據《基本法》第七十三條第(九)項，就某項根據第 31AA(2)條提交立法會議員的事宜作出聯合動議，指控行政長官有嚴重違法行為或瀆職行為，則就任何人披露律政司司長根據第 31AA(2)條向立法會議員提供的關乎該事宜的任何資料而言，第 30(1)條不適用。

(5) 在本條中，“秘書長”(Secretary General)具有《立法會行政管理委員會條例》(第 443 章)第 2 條給予該詞的涵義。”。

6 刪去該條而代以 —

“6. 其他的指明的罪行

(1) 《有組織及嚴重罪行條例》(第 455 章)附表 2 現予修訂，在第 9 段中，廢除 —

“第 5(1)條 為合約事務上給予協助等而作的賄賂”

而代以 —

“第 4(2A)條 賄賂行政長官

第 4(2B)條 以行政長官身分索取或接受
賄賂

第 5(1)條 為合約事務上給予協助等而
向公職人員作的賄
賂”。

(2) 附表 2 現予修訂，在第 9 段中，在 —

“第 5(2)條 以公職人員身為合約事務
上給予協助等而索取或
接受賄賂”

之後加入 —

“第 5(3)條 為合約事務上給予協助等而
向行政長官作的賄賂

第 5(4)條 以行政長官身為合約事務
上給予協助等而索取或
接受賄賂”。