

A BILL

To

Amend the Prevention of Bribery Ordinance—

- (a) to apply to the Chief Executive the provisions of sections 4 and 5 of that Ordinance that are now applicable to prescribed officers;
- (b) to apply to the Chief Executive section 10 of that Ordinance;
- (c) to enable the Commissioner of the Independent Commission Against Corruption and the Secretary for Justice to refer a matter involving an offence under that Ordinance suspected to have been committed by the Chief Executive to the Secretary for Justice and to the Legislative Council respectively; and
- (d) to provide for matters connected with these purposes, and to make related amendments to the Organized and Serious Crimes Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Prevention of Bribery (Amendment) Ordinance 2007.

Prevention of Bribery Ordinance

2. Bribery

Section 4 of the Prevention of Bribery Ordinance (Cap. 201) is amended by adding—

“(2A) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive’s—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2B) If the Chief Executive, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

he shall be guilty of an offence.”.

3. Bribery for giving assistance, etc. in regard to contracts

Section 5 is amended by adding—

“(3) Any person who, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive’s giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution or procuring of—
 - (i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance; or
 - (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in paragraph (a),

shall be guilty of an offence.

(4) If the Chief Executive, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution or procuring of; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (3)(a), he shall be guilty of an offence.”.

4. Possession of unexplained property

(1) Section 10(1) is amended by adding “the Chief Executive or” after “having been”.

(2) Section 10 is amended by adding—

“(1A) If the accused in any proceedings for an offence under subsection (1) is or has been the Chief Executive, the court, in determining whether the accused has given a satisfactory explanation as provided in that subsection, shall take into account assets that he declared to the Chief Justice pursuant to Paragraph 2, Article 47 of the Basic Law.

(1B) The Chief Justice shall disclose to a court information about assets declared to him pursuant to Paragraph 2, Article 47 of the Basic Law if the disclosure is required by an order made by the court for the purposes of subsection (1A).”.

5. Section added

The following is added immediately after section 31—

“31AA. Referral of matter involving offence suspected to have been committed by Chief Executive

(1) Notwithstanding section 30, where the Commissioner has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, the Commissioner may refer the matter to the Secretary for Justice for him to consider whether to exercise his power under subsection (2).

(2) Notwithstanding section 30, where as a result of a referral made under subsection (1), the Secretary for Justice has reason to suspect that the Chief Executive may have committed an offence under this Ordinance, he may refer the matter to the Legislative Council for it to consider whether to take any action under Article 73(9) of the Basic Law.”.

Organized and Serious Crimes Ordinance

6. Other specified offences

(1) Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 9, by adding “and (2A)” after “section 4(1)”.

(2) Schedule 2 is amended, in paragraph 9, by adding “or the Chief Executive” after “public servant”.

(3) Schedule 2 is amended, in paragraph 9, by adding “and (3)” after “section 5(1)”.

Explanatory Memorandum

The main object of this Bill is to amend the Prevention of Bribery Ordinance (Cap. 201) (“the Ordinance”) to make provision relating to the solicitation and acceptance of advantages by the Chief Executive by extending sections 4, 5 and 10 of the Ordinance to the Chief Executive.

2. Section 4(2) of the Ordinance makes it an offence for a prescribed officer to solicit or accept any advantage as a reward for his performing any act in his capacity as a prescribed officer. It is also an offence under section 4(1) of the Ordinance for a person to offer such an advantage to a prescribed officer. Clause 2 adds to section 4 of the Ordinance similar provisions that apply in relation to the Chief Executive and a person who offers such an advantage to the Chief Executive.

3. Section 5(2) of the Ordinance makes it an offence for a prescribed officer to solicit or accept any advantage as a reward for his giving assistance in the execution of a contract. It is also an offence under section 5(1) of the Ordinance for a person to offer such an advantage to a prescribed officer. Clause 3 adds to section 5 of the Ordinance similar provisions that apply in relation to the Chief Executive and a person who offers such an advantage to the Chief Executive.

4. Under section 10 of the Ordinance, a prescribed officer who maintains a standard of living above that which is commensurate with his present or past official emoluments is, unless he gives a satisfactory explanation to the court, guilty of an offence. Clause 4 amends section 10 of the Ordinance so that it is applicable to the Chief Executive. It further provides that the court, in determining whether the Chief Executive has given a satisfactory explanation, shall take into account the Chief Executive's assets declared to the Chief Justice pursuant to the Basic Law, and that the Chief Justice shall disclose information about those assets if there is a court order requiring such disclosure.

5. Clause 5 adds section 31AA to the Ordinance. It enables the Commissioner of the Independent Commission Against Corruption to refer a matter involving an offence suspected to have been committed by the Chief Executive to the Secretary for Justice for him to consider whether to refer the matter to the Legislative Council. It also enables the Secretary for Justice to refer such a matter to the Legislative Council for it to consider whether to take any action under Article 73(9) of the Basic Law.

6. Clause 6 makes related amendments to Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455).