

立法會
Legislative Council

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Tel : 2869 9205

Date : 30 May 2007

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 June 2007

**Proposed resolution under
the Organized and Serious Crimes Ordinance**

I forward for Members' consideration a proposed resolution which the Chief Secretary for Administration will move at the Council meeting of 20 June 2007 under the Organized and Serious Crimes Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The draft speech, in both English and Chinese versions, which the Chief Secretary for Administration will deliver when moving the proposed resolution, is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

ORGANIZED AND SERIOUS CRIMES ORDINANCE

RESOLUTION

(Under section 31 of the Organized and Serious
Crimes Ordinance (Cap. 455))

RESOLVED that the Organized and Serious Crimes Ordinance
(Amendment of Schedule 2) Order 2007, made by the Chief
Executive in Council on 22 May 2007, be approved.

**ORGANIZED AND SERIOUS CRIMES ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2007**

(Made by the Chief Executive in Council under section 31
of the Organized and Serious Crimes Ordinance
(Cap. 455) subject to the approval
of the Legislative Council)

1. Other specified offences

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

- (a) by adding –
- | | |
|---------------|---|
| “section 4(2) | soliciting or accepting bribes in the capacity of a public servant” |
| after – | |
| “section 4(1) | bribery of public servant”; |
- (b) by adding –
- | | |
|---------------|--|
| “section 5(2) | soliciting or accepting bribes in the capacity of a public servant for giving assistance, etc. in regard to contracts” |
| after – | |
| “section 5(1) | bribery for giving assistance, etc. in regard to contracts”; |
- (c) by adding –
- | | |
|---------------|---|
| “section 6(2) | soliciting or accepting bribes for withdrawal of tenders |
| section 9(1) | soliciting or accepting bribes in the capacity of an agent” |
| after – | |

“section 6(1) bribery for procuring withdrawal of tenders”.

Clerk to the Executive Council

COUNCIL CHAMBER

22 May 2007

Explanatory Note

The Central People’s Government of the People’s Republic of China has ratified the United Nations Convention against Corruption (“the Convention”) and the Convention entered into force for the People’s Republic of China, including Hong Kong, on 12 February 2006. Under Article 31 of the Convention, parties to the Convention are required to adopt measures to, amongst others, freeze, seize and confiscate proceeds of corruption related crimes.

2. To better fulfil the requirements under Article 31 of the Convention, this Order amends Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) by adding to that Schedule the offences under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (Cap. 201). Under the amendments, the proceeds or property derived from those offences may be subject to a restraint order, charging order or confiscation order made under the Organized and Serious Crimes Ordinance (Cap. 455).

**Draft Speech by the Chief Secretary for Administration
in moving the resolution under the Organized and Serious Crimes
Ordinance (Cap. 455)
at the Legislative Council meeting on 20 June 2007**

Madam President,

I move that the Resolution for amending Schedule 2 to the Organized and Serious Crimes Ordinance be passed. The Resolution has been set out in the Agenda.

2. The United Nations Convention Against Corruption has been ratified by the Central People's Government and entered into force for China including the Hong Kong Special Administrative Region. While most of the requirements of the Convention can be fulfilled by existing legislation and administrative measures, some legislative amendments, should be made to implement the requirements under the Convention regarding confiscation of proceeds of crime. The Administration has consulted the Legislative Council Panel on Security on the legislative proposals to implement the UNCAC. The Chief Executive in Council has subsequently made the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 under section 31 of the Organized and Serious Crimes Ordinance so as to better fulfil the requirements under Article 31 of the Convention.

3. Pursuant to Article 31 of the Convention, States Parties are required, to the greatest possible extent under their domestic legal systems, to adopt measures for the identification, tracing, freezing, seizure and the eventual confiscation of proceeds derived from bribery. Under our domestic legal framework, provisions for the freezing, seizure and confiscation of proceeds of crimes are provided for under the Organized and Serious Crimes Ordinance. The HKSAR Government can apply to the court to exercise the above powers to deal with proceeds derived from offences listed in Schedule 2 to the Ordinance.

4. Offences under sections 4(1), 5(1), 6(1) and 9(2) of the Prevention of Bribery Ordinance relating to the "*offering*" of bribes are already included in Schedule 2 to the Organized and Serious Crimes Ordinance, whilst offences relating to "*soliciting or accepting*" bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance are not. Hence, the tool for the confiscation of proceeds as provided for under the framework of the Organized and Serious Crimes Ordinance is currently not available to the offences relating to "*soliciting or accepting*" of bribes.

5. The Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007 adds the offences of soliciting or accepting bribes under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance to Schedule 2 to the Organized and Serious Crimes Ordinance. By so doing, the HKSAR Government will be able to apply to the court for the freezing, seizure and confiscation of proceeds or property derived from these corruption offences of soliciting and accepting bribes.

6. The HKSAR Government is committed to the fight against corruption and accords top priority to international co-operation in anti-corruption measures. The Order would enable Hong Kong to better fulfil the requirements under the Convention regarding confiscation of proceeds of crimes. This is important for strengthening our co-operation with other jurisdictions on anti-corruption.

7. I invite Members to approve the making of the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007.

8. Thank you, Madam President.