

立法會 *Legislative Council*

LC Paper No. LS124/06-07

Paper for the House Committee Meeting on 5 October 2007

Legal Service Division Report on Prevention of Bribery (Amendment) Bill 2007

I. SUMMARY

1. **Object of the Bill** To make provision relating to the solicitation and acceptance of advantages by the Chief Executive (CE).
2. **Comments**

The Bill seeks to apply three main provisions (sections 4, 5 and 10 respectively) of the Prevention of Bribery Ordinance (Cap. 201) (the Ordinance) to CE. These provisions which hitherto apply to public servants or prescribed officers, make it an offence -

 - (a) to solicit or accept any advantage on account of the person's official capacity or in regard to public sector contracts; and
 - (b) to have a standard of living or property disproportionate to the person's emoluments and has no satisfactory explanation;

A new provision will be added to allow referral by the Commissioner of the Independent Commission Against Corruption of a suspected offence by CE under the Ordinance to the Secretary for Justice. It may be further referred to LegCo for the purpose of impeachment under the Basic Law.
3. **Public Consultation** There is no information that public consultation has been conducted.
4. **Consultation with LegCo Panel** The Panel on Constitutional Affairs has been monitoring the Administration's review of the application of certain provisions of the Ordinance to CE since early 1999. In 2005, the Administration consulted the ad hoc Subcommittee set up by the Panel on its proposal to introduce legislative amendments. In February 2006, the Panel urged the Administration to proceed with drafting of a bill as soon as possible, taking into account members' views.
5. **Conclusion** In view of the interest that has been expressed by members on the need for the proposed legislative amendments, a Bills Committee should be set up to study the Bill in detail.

II. REPORT

Object of the Bill

To amend the Prevention of Bribery Ordinance (Cap. 201) (the Ordinance) to make provisions relating to the solicitation and acceptance of advantages by the Chief Executive (CE).

LegCo Brief Reference

2. Issued by the Administration Wing, Chief Secretary for Administration's Office and dated 5 July 2007.

Date of First Reading

3. 11 July 2007.

Comment

4. At present, none of the provisions of the Ordinance are made applicable to CE. According to the Administration (paragraph 3 of LegCo Brief), the existing anti-corruption regime applying to CE consists of the common law offence of bribery, Article 47 of the Basic Law (which requires CE to be a person of integrity and to declare his assets) and Article 73(9) of Basic Law (providing for an impeachment mechanism for serious breach of law by CE).

5. The Bill will extend three main provisions of the Ordinance which now apply to public servants (including prescribed officers and employees of specified public bodies) or prescribed officers (including principal officials, judicial officers and civil servants) so as to include CE in their application. These provisions make it an offence to -

- (a) solicit or accept any advantage as an inducement to or reward for or otherwise on account of the person acting in his official capacity (section 4 of the Ordinance);
- (b) solicit or accept any advantage as an inducement to or reward for or otherwise on account of giving assistance in regard to public sector contracts (section 5 of the Ordinance); and
- (c) to maintain a standard of living or to control property disproportionate to the person's emoluments which he cannot satisfactorily explain (section 10 of the Ordinance).

No changes are proposed in the Bill to the penalties for the offences.

6. The Bill also contains a proposal to provide that the Commissioner of the Independent Commission Against Corruption (ICAC) may make a referral to the Secretary for Justice (SJ) if he has reason to suspect that CE may have committed an offence under the Ordinance as amended. SJ may then refer the case to LegCo if he also has reason to suspect the same, so that LegCo may consider whether to take any action under Article 73(9) of the Basic Law.

7. The latter proposal is likely to raise issues related directly or otherwise to the referral (see paragraph 10 below). Among other things, the Administration has earlier agreed to consider the issue of confidentiality and disclosure of information contained in the referral to LegCo. This would need to be followed-up by Members in their scrutiny of the Bill.

Public Consultation

8. There is no information in the LegCo Brief that the public had been consulted.

Consultation with LegCo Panel

9. The Panel on Constitutional Affairs has been monitoring the Administration's review of the application of certain provisions of the Ordinance to CE since early 1999. Due to lack of progress of the review, the Panel formed a Subcommittee in May 2005 to follow up the issue more closely.

10. In November 2005, the Administration consulted the Subcommittee on its main legislative proposals, namely, to apply sections 4, 5 and 10 the Ordinance to CE, to add a new provision against any person offering advantage to CE in line with section 8(1) and to interface with Article 73(9) of the Basic Law by empowering SJ to refer to LegCo a report from ICAC on CE being suspected of any offence under the Ordinance, so that LegCo may consider any follow-up action under the impeachment mechanism provided for under the Basic Law.

11. There was much discussion on issues arising from the referral proposal (see Report of the Subcommittee an Application of Certain Provisions of Prevention of Bribery Ordinance to the Chief Executive to the Panel (CB(2)1149/05-06(01)), including -

- (a) the interface between the LegCo's impeachment process and SJ's prosecution of CE in case of a serious breach of law (e.g. bribery provisions under the Ordinance);
- (b) the appropriate body for conducting investigations into bribery complaints against CE;

- (c) the LegCo procedure for implementation of Article 73(9); and
- (d) immunity and protection of LegCo Members if there is inadvertent disclosure of confidential information contained in SJ's referral outside the proceedings of the Council and its committees.

Conclusion

12. In view of the interest that has been shown by Members over the years on the need for the proposed legislative provisions introduced by the Bill and their views and concerns expressed over the draft proposals at the Panel, a Bills Committee should be set up to study the Bill in detail.

Prepared by
Arthur CHEUNG Ping-kam
Senior Assistant Legal Adviser 2
Legislative Council Secretariat
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