

**Legislative Council Subcommittee on
Subsidiary Legislation to Implement the Obligations
under the United Nations Convention Against Corruption**

Purpose

This note provides information on how the obligations under the United Nations Convention Against Corruption (UNCAC) have been fulfilled through existing legislation and administrative measures and whether the proposed addition of the offences under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (POBO) to Schedule 2 to the Organized and Serious Crimes Ordinance (OSCO) is necessary for achieving the confiscation requirement under the UNCAC.

Implementing the UNCAC in Hong Kong

2. The UNCAC introduces a comprehensive set of standards, measures and rules that States Parties can apply, in order to strengthen the legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of various forms of corruption in both public and private sectors. It also introduces the fundamental principle and framework for stronger co-operation between states to prevent corruption. In February 2006, the Convention came into force for China and became applicable to the HKSAR at the same time.

3. Save for Articles 31, 44, 46 and 57 which require legislative actions for fulfilling the obligations regarding confiscation of proceeds of crime, extradition and mutual legal assistance in criminal matters, all other requirements under the UNCAC can be fulfilled through existing legislation and administrative measures. Details are set out in the table at **Annex A**.

Annex A

Proposed addition to Schedule 2 to the OSCO

4. At the Subcommittee meeting on 12 June 2007, Members asked whether the proposed addition of the offences on “*soliciting or accepting bribes*” under sections 4(2), 5(2), 6(2) and 9(1) of the POBO to Schedule 2 to the OSCO was necessary for achieving the confiscation requirements under UNCAC.

5. Pursuant to Article 31 of the UNCAC, 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.

6. Under our domestic legal framework, provisions for the freezing, seizure and confiscation of proceeds of crimes are provided for under the OSCO. The HKSARG can apply to the court to exercise the above powers to deal with proceeds derived from offences listed in Schedule 2 to the OSCO. However, only offences on “*offering*” bribes as defined under sections 4(1), 5(1), 6(1) and 9(2) of the POBO are included in Schedule 2 to the OSCO, but not the offences on “*soliciting or accepting*” bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the POBO (extract of Schedule 2 to OSCO is at **Annex B** and the relevant sections of POBO at **Annex C**).

Annex B

Annex C

7. At present, section 12 of the POBO stipulates that a person who is guilty of a bribery offence can be ordered to return the amount or value of advantage received by him. However, the Order under section 12 of the POBO is a civil order and is enforceable by the principal of the corrupt agent, not necessarily by HKSAR Government. Hence, section 12 of the POBO does not provide the same tool for the confiscation of proceeds as that provided for under the OSCO framework (extract of section 12 of POBO is at **Annex D**).

Annex D

8. The proposed legislative amendment will allow HK to better achieve the confiscation requirement of the UNCAC. Instead of using the civil order provided under section 12 of POBO, the HKSAR Government can apply to the court for “Restraint Orders”, “Charging Orders” and “Confiscation Orders” under the OSCO for the freezing, seizure and confiscation of proceeds or property derived from “*soliciting or accepting*” bribes.

Administration Wing
Chief Secretary for Administration’s Office
10 July 2007

How the obligations under the United Nations Convention Against Corruption (UNCAC) have been fulfilled through the existing legislation and administrative measures in Hong Kong

Article(s)	Description of the Article / Requirement(s) under the Article	Legislation / Administrative Measures
<i>Chapter I – General Provisions</i>		
1-4	This section outlines the aim of the Convention, defines terms employed throughout the text, states the scope of application and reiterates the principle of protection of sovereignty of States Parties.	The definitions provided under the Convention can be covered by our domestic law.
<i>Chapter II – Preventive Measures</i>		
<i>A. Preventive anti-corruption policies and practices</i>		
5	States parties are required to develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs, and to collaborate with each other and relevant international and regional bodies for the pursuit of the above goals.	The Independent Commission Against Corruption (“ICAC”) is an independent public organ established under the ICAC Ordinance (Cap. 204). Reporting directly to the CE, the ICAC adopts a three-pronged approach of investigation, prevention and education to fight corruption in both the public and private sectors.
6	States parties are required to have an anti-corruption body or bodies in charge of preventive measures and policies and to grant that body independence to ensure that it can do its job unimpeded by undue influences and provide it with adequate resources and training.	
10	States parties are required to take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate.	Government will consult the public and relevant organizations when it formulates and reviews major policies. To ensure reasonable access to government information, an administrative

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13	States Parties are required to take appropriate measures to promote the participation of civil society, non-governmental organizations and community-based organizations in anti-corruption activities and to make efforts to increase public awareness of the threats, causes and consequences of corruption.	<p>Code on Access to Information applies to all government bureaux and departments, which are committed to making information available to the public. The Code provides for a set of rules to meet public expectation of greater government transparency. It sets out the types of government information to which the public has access and lists categories of exemptions to ensure appropriate protection of confidential and sensitive information held by the Government and information involving personal privacy and commercial sensitivity.</p> <p>The Community Relations Department of the ICAC has been conducting programmes to enlist public support in combating corruption.</p>
<i>B. Transparency measure and system in the public sector</i>		
7 – 9 and 11	<p>States Parties are required to take corruption prevention measures in the public sector in relation to -</p> <ul style="list-style-type: none"> • Recruitment, hiring, promotion and retirement of civil servants • Codes of conduct for public officials • Public procurement and management of public finances • The judiciary and prosecution services 	<p>Civil Service Regulations (“CSRs”) and service-wide circulars provide guidelines and safeguards on the appointment, promotion, and code of conduct and discipline of civil servants. The dismissal, suspension and discipline of public servants and officers are also subject to the Public Service (Administration) Ordinance (“PS(AO)”) which is an order made by the CE. The Prevention of Bribery Ordinance (Cap. 201) (“POBO”) provides comprehensive control in respect of bribery offences in the public sector. The conduct and discipline regimes of disciplined services staff are enshrined in the respective disciplined services legislation. The Code for Principal Officials Under the Accountability System has stipulated the basic principles and code of conduct which Principal Officials should follow in the performance of their duties.</p> <p>The Audit Ordinance (Cap. 122), the Public Finance Ordinance (Cap. 2), the World Trade Organization Agreement on Government Procurement and the internal regulations and guidelines on procurement procedures have provided measures for ensuring a fair, competitive, accountable and transparent public procurement process and the proper control and management of public finance. The Government publishes its budget annually and the budget is subject to the approval of the Legislative Council. Furthermore, the Government publishes its financial results regularly to meet the International Monetary Fund's Special Data Dissemination Standards.</p>

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		<p>Judges and Judicial officers are subject to Article 89 of the Basic Law, the POBO and the Judicial Officers (Tenure of Office) Ordinance (Cap. 433). The Judiciary has also published a Guide to Judicial Conduct.</p> <p>For public prosecutors, they are subject to the POBO and the CSRs. The independence of the prosecution is safeguarded under Article 63 of the Basic Law.</p> <p>The Corruption Prevention Department of the ICAC has a statutory duty to advise Government departments and public bodies of corruption prevention measures and examines their practices and procedures to secure the revision of work methods which may be conducive to corrupt practices.</p>
<i>C. Private Sector</i>		
12	<p>States Parties shall take measures to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. Measures may include promoting cooperation between law enforcement agencies and relevant private entities, promoting transparency among private entities, preventing conflict of interest by imposing restrictions, as appropriate and for a reasonable time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, etc.</p>	<p>The requirements can be achieved through the programmes of the Corruption Prevention Department and Community Relations Department of the ICAC. All along, the HKSARG has been making concerted efforts to enhance the corporate governance regime of HK, thereby promoting transparency among private entities.</p> <p>In terms of legislative measures, the Professional Accountants Ordinance (Cap. 50) was amended in 2004 to enhance the independence of, and lay participation in, the regulatory function of the Hong Kong Institute of Certified Public Accountants (“HKICPA”).</p> <p>Legislation was also enacted in 2006 to establish a new statutory body, the Financial Reporting Council (“FRC”), tasked with investigating accounting and auditing irregularities of listed companies. The FRC will become fully operational on 16 July 2007.</p> <p>The Government is also in the course of rewriting the Companies Ordinance with a view to modernising our company law to enhance Hong Kong's competitiveness and attractiveness as an international business and financial centre through, among other things, strengthening corporate</p>

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		<p>governance.</p> <p>With due recognition for the HKICPA's efforts, Hong Kong became the first jurisdiction in the Asia-Pacific region to achieve full convergence with International Financial Reporting Standards and adopt the best international practice in the areas of auditing and accounting ethics.</p> <p>On post-service employments of civil servants, controls are provided under the Pensions Ordinance (Cap. 89), the Pension Benefits Ordinance (Cap. 99), the CSRs and the CSB Circulars. Principal Officials under the Accountability System are required to follow the relevant post-office employment control requirements as stipulated in the Code for Principal Officials Under the Accountability System.</p>
<i>D. Prevention of Money Laundering</i>		
14	States Parties shall institute a regulatory and supervisory regime for bank and non-bank financial institutions in order to deter and detect all forms of money laundering.	<p>Government departments and financial regulators which are responsible for anti-money laundering have the ability to cooperate and exchange information at both the national and international levels. A Financial Intelligence Unit have been set up and jointly operated by the Police and the Customs and Excise Department.</p> <p>The financial regulators in Hong Kong, namely, the Hong Kong Monetary Authority ("HKMA"), the Insurance Authority and the Securities and Futures Commission ("SFC") have all issued guidelines on prevention of money laundering to those industries under their respective supervision. These guidelines are updated regularly in line with the latest international standards and legislative changes. The guidelines are enhanced and updated from time to time.</p> <p>Hong Kong participates actively in international and regional initiatives aiming at combating money laundering. Hong Kong has been an active member of the Financial Action Task Force on Money Laundering ("FATF"), the international anti-money laundering standard setter since 1990 and a founding member of the Asia Pacific Group on Money Laundering ("APG"). We are in the process of implementing the revised Forty Recommendations published by FATF in June 2003 as well as the Nine Special Recommendations on Terrorist Financing. Legislative</p>

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		amendments will be needed to implement some of the Recommendations.
Chapter III – Criminalization and law enforcement		
<i>A. Criminalization</i>		
15 and 16	States Parties shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving, to a public official or foreign official, and the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.	The requirements under these articles are fulfilled under the POBO. Under section 4 of the Ordinance, any person who offers bribe to a public servant, and any public servant who solicits or accepts bribes will commit an offence. Any person who offers bribes to a foreign public official in Hong Kong, and any foreign public official in Hong Kong who solicits or accepts bribes will commit an offence under section 9 of the Ordinance. If the offence happens in other jurisdiction, the HKSARG will consider extradition of the foreign public official in question.
17	States Parties shall adopt such legislative and other measures as may be necessary to establish as a criminal offences, when committed intentionally, the embezzlement, misappropriation or diversion by a public official for his or her benefit, of any property, funds, securities or any item of value entrusted to a public official by virtue of his or her position.	It is an offence under section 9 of the Theft Ordinance (Cap. 210) to steal property. The Theft Ordinance contains a range of other offences which can also be used where there has been embezzle or misappropriate properties. Public officials are also subject to the common law offence of misconduct in public office.
18-22	Trading in influence, abuse of functions, illicit enrichment, and bribery and embezzlement of property in the private sector.	The requirements under these Articles are optional but Hong Kong is able to satisfy most of them through the offence of misconduct in public office (Article 19); section 10 of the POBO (Article 20); section 9 of the POBO (Article 21) and the Theft Ordinance (Article 22). The provisions of the POBO may also cover the conduct in Article 18.
23	States Parties shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish the conversion or transfer of proceeds of crime and the concealment or disguise of the true nature, source, location, disposition, movement or ownership of proceeds of crime as criminal offences.	The requirement is fulfilled under sections 25 and 25A of the Organized and Serious Crimes Ordinance (Cap. 455) (“OSCO”).

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24	Concealment	Although the requirement under this Article is optional, the obligation is fulfilled by virtue of sections 25 and 25A of OSCO.
25	<p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences –</p> <ul style="list-style-type: none"> • the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of the offences covered by the Convention; and • the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by the Convention. 	The requirement is fulfilled under sections 13A and 13B of ICACO and section 23 of the Summary Offences Ordinance (Cap. 228) which provide that a person would be guilty of an offence if he/she resists or obstructs ICAC/public officer in the performance of his duty. There is also the common law offence of perverting the course of justice.
26	Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with the Convention.	The requirement is fulfilled under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that “person” include any public body and any body of persons, corporate or unincorporate. Legal persons are therefore subject to criminal liability under HK Laws.
27	Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as accomplice, assistance or instigator in an offence established in accordance with the Convention.	The requirement is fulfilled under section 89 of Criminal Procedure Ordinance (Cap. 221) (“CPO”) which provides that any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence. Sections 159G-K of Crimes Ordinance (Cap. 200) provides that a person will be liable for an offence if he attempts to commit an offence and sections 159A-F of the same ordinance which provides that a person will be liable for an offence of conspiracy if he agrees with another to commit an offence.
<i>B. Law enforcement</i>		
28	States Parties are required to ensure that the knowledge, intent and purpose required of an offence established in accordance with the Convention may be inferred from objective factual circumstances.	It is allowed under common law that proof of any element of a criminal offence may be inferred.

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29	States Parties shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with the Convention and suspend them or establish longer ones for alleged offenders evading the administration of justice.	Save for section 3 which requires a prosecution to be instituted within 2 years from the time the offence is committed, there is no limitation period for the bribery offences under the POBO.
30	States Parties shall make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of that offence, maintain a balance between any immunities or jurisdictional privileges accorded to its officials for the performance of their functions and the possibility of effectively investigating, prosecuting and adjudicating offences established under the convention, ensure that conditions imposed in connection with decisions on release pending trial and appeal take into consideration the need to ensure the defendants' presence at criminal proceedings.	Under existing law, public officials do not enjoy any immunity. The POBO and the CPO have provided a detailed bail regime. In addition, sections 33 and 33A of the POBO, the PS(A)O and the CSRs have provisions to suspend or remove a civil servant or public servant from duty.
31	Freezing, seizure and confiscation	An order under the OSCO has been prepared to better fulfill the confiscation requirements under this Article. It is being scrutinized by the Subcommittee on Subsidiary Legislation to Implement the Obligations under the UNCAC.
32	States Parties shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection for witnesses, experts who give testimony and victims (insofar they are witnesses).	The Witness Protection Ordinance (Cap. 564) provides for the establishment of a programme for the protection of certain witnesses and persons associated with witnesses. Similar protection is also given under the POBO and CPO.
33	Protection of reporting persons	The requirement under this Article is optional. However, the obligation under this Article is fulfilled by virtue of 30A of POBO which specifically provides that the informers should be protected and their identities should not be disclosed.
34	Each State Party shall take measures, in accordance with the fundamental principals of its domestic law, to address consequences of corruption.	The obligation is fulfilled by virtue of section 33A of POBO under which the court may order that the convicted person be temporarily or permanently prohibited from taking or continuing employment as the director or manager of a company or from practising a profession or

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		removed from a partnership.
35	States Parties shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.	Under section 12 of POBO, a principal is entitled to recover from his/her corrupt agent the bribe received by that agent, and any proceeds flowing from it. The principal also has a right of action against the person who bribed the agent to recover any loss sustained as a result of the corruption.
36	States Parties shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.	The ICAC is an independent public organ established under the ICACO to fight corruption.
37	States Parties shall take appropriate measures to encourage persons who participate or who have participated in commission of an offence established in the Convention to supply information for investigative and evidentiary purposes and to provide factual, specific help contributing to depriving offenders of the proceeds of crime. It also requires States Parties to extend the protections to persons providing substantial cooperation in the investigation or prosecution of a corruption offence.	<p>The common law principle of sentencing developed by courts allows substantial sentencing discounts for assistance to the prosecution and the ICAC. This includes the use of the Sivan procedure to protect the confidentiality of that assistance.</p> <p>Convicted accomplices who assisted the prosecution and the ICAC can make petitions to the Chief Executive for reduction in sentence.</p> <p>Protection to the person giving assistance is provided under the Witness Protection Ordinance. ICAC also takes measures to help an informant settle back into civilian life with, if necessary, assistance.</p>
38 and 39	<p>States Parties shall take such measures as may be necessary to encourage cooperation between –</p> <ul style="list-style-type: none"> • the public authorities and public officials; • the authorities responsible for investigating and prosecuting criminal offences; and • the national investigating and prosecuting authorities and entities of the private sector. 	<p>Under section 16 of POBO, ICAC officers may apply to any public servant for assistance in the exercise of his powers or the discharge of his duties. CSB circulars and the programmes of the Corruption Prevention Department of the ICAC have also provided such guidelines.</p> <p>Cooperation between the ICAC and private sector is established through the programmes of the ICAC Corruption Prevention Department and the Community Relations Department.</p>

Article(s)	Description of the Article / Requirement(s) under the Article	Legislation / Administrative Measures
40	Each State Party shall ensure that there are appropriate mechanisms available within its domestic legal system to overcome obstacle that may arise out of the application of bank secrecy laws.	<p>Under sections 13 and 14(1) of POBO, the ICAC can apply to Courts for an Order to obtain necessary information.</p> <p>The HKMA is provided with a series of powers under the Banking Ordinance (Cap.155) (“BO”) to supervise Authorized Institutes (“AIs”). Under section 55, the HKMA is empowered to conduct examinations of AIs. Section 56(1) has made it clear that, in an examination of an AI, the HKMA examiners have the power to access the AI’s books and accounts and such other information and facilities which may be required to conduct the examination. Under section 63(2), the HKMA is empowered to require AIs to submit information which the HKMA may reasonably require for performing its functions. Failure to comply with section 56(1) and section 63(2) in providing the necessary information is a criminal offence under the BO.</p>
41	Criminal Record	<p>The requirement under this Article is optional. Questions as to previous convictions can be asked of a defendant who testifies in his trial. However the defendant can only be asked such questions in the circumstances described in section 54(1)(f) of the Criminal Procedure Ordinance (Cap. 221). Besides, the prior good character of every convicted person is always relevant to his sentencing. The fact that a convicted person has a prior conviction in another jurisdiction is relevant to his character and a court could therefore take it into account, subject to it being properly proven or admitted by the convicted person.</p>
42	Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offence which is actually committed in its territory or on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party.	<p>The requirement is satisfied by section 23B of the Crimes Ordinance in respect of vessels and section 3 of the Aviation Security Ordinance (Cap. 494) in respect of aircraft.</p> <p>The Criminal Jurisdiction Ordinance (Cap. 461) extends the criminal jurisdiction of certain offences which are mainly fraud offences. Such offences are UNCAC offences insofar as they are contemplated by Articles 17 and 22.</p>

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Chapter IV – International Cooperation		
43	States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of the Convention (relating to extradition, mutual legal assistance, the transfer of criminal proceedings and law enforcement, including joint investigations and special investigative techniques).	The requirements are fulfilled under Part VIII of the Evidence Ordinance (Cap. 8), the Fugitive Offenders Ordinance (Cap. 503) (“FOO”) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (“MLAO”).
<i>A. Extradition and Mutual Legal Assistance (“MLA”)</i>		
44	Extradition	An Order under the FOO has been prepared to implement the extradition requirements. It is being scrutinized by the Subcommittee on Subsidiary Legislation to Implement the Obligations under the UNCAC.
46	Mutual Legal Assistance	An Order under the MLAO has been prepared to implement the MLA requirements. It is being scrutinized by the Subcommittee on Subsidiary Legislation to Implement the Obligations under the UNCAC.
<i>B. Other forms of cooperation</i>		
45 and 47	Transfer of Sentenced Persons and Criminal Proceedings	The requirements under these Articles are optional. The requirements are nevertheless fulfilled by virtue of the Transfer of Sentenced Persons Ordinance (“TSP”) (Cap. 513) and TSP agreements signed with other jurisdictions.
48	States Parties shall cooperate closely with one another to enhance the effectiveness of law enforcement action to combat the corruption offences. More specifically, they shall take measures to enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information, to cooperate with other States Parties in conducting inquiries concerning the identity, whereabouts and activities of persons suspected of involvement in such offences, etc.	In addition to the measures as stated in Article 43, the ICAC has routine liaison with Interpol and is maintaining regular liaison with various overseas anti-corruption agencies. The ICAC has also hosted regional and international seminars/conferences on anti-corruption issues e.g. the Third ICAC Symposium held in May, 2006 with the main theme “Corporate Corruption, Integrity and Governance”.
49	Joint investigations	The requirement under this Article is optional. However, the ICAC is willing to consider intelligence sharing and cooperative investigation with different jurisdictions through liaison in appropriate cases.

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50	Each State Party shall take such measures as may be necessary, to allow for the appropriate use by its competent authorities of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, provided that this is not in contrary to the basic principles of their respective domestic legal system.	Part III of POBO has provided ICAC special powers of investigations.
Chapter V – Asset Recovery		
51	General Provision	See Articles 52-59 below.
52	Each State Party shall take such measures as may be necessary, in accordance with their domestic law, to require financial institutions within its jurisdiction, to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.	<p>The Securities and Futures Ordinance (“SFO”)(Cap. 571) provides a legal regime for the licensing, supervision of business conduct and sanctioning of persons operating in the securities and futures industries. Its subsidiary legislations require intermediaries and their associated entities to maintain adequate accounting, trading and other records . Further, the SFC has published a guidance note under section 399 of the SFO entitled “Prevention of Money Laundering and Terrorist Financing Guidance Note” to require an intermediary and their representatives to take specified steps to introduce and implement procedures to discourage and identify any money laundering activities. In addition, the Code of Conduct published pursuant to section 399 of the SFO requires licensed or registered persons to establish the true and full identity of their clients.</p> <p>The HKMA sets out the AML/CFT requirements applicable to AIs in two supervisory guidelines. They provide that AIs should obtain satisfactory evidence of the identity and legal existence of persons applying to do business with the institution. Under the guidelines, AIs should conduct customer due diligence (“CDD”) measures including (a) identifying the direct customer; (b) verifying the customer’s identity using reliable, independent source documents, data or information; (c) identifying beneficial ownership and control; (d) verifying the identity of the beneficial owner of the customer and/or the person on whose behalf a transaction is being conducted; and (e) conducting on-going due diligence and scrutiny. In addition, specific requirements are set out to require AIs to conduct enhanced CDD measures in relation to individuals holding important public positions as well as persons or companies clearly related</p>

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		<p>to them (e.g. families, close associates etc). In the guidelines, such individuals and associated entities are termed as politically exposed persons (PEP). The enhanced CDD measures include:</p> <ul style="list-style-type: none"> (i) AIs should gather sufficient information from a new customer, and check publicly available information to establish whether or not the customer is a PEP; (ii) AIs should ascertain the source of funds before accepting a PEP as customer; and (iii) the decision to open an account for a PEP should be taken at a senior management level. <p>The Insurance Companies Ordinance (Cap. 41) (“ICO”) also requires insurers and insurance brokers to keep proper book of account. The Guidance Note on Prevention of Money Laundering and Terrorist Financing promulgated by the Insurance Authority has taken into account the revised Forty Recommendations and nine Special Recommendations issued by the FATF and can thereby meet the requirements set out in Article 52(1). For Article 52(2), the Insurance Authority has from time to time issued circulars to insurance institutions informing them the latest list of suspected terrorists and Non-Cooperative Countries and Terrorists announced by the FATF. For Article 52(3), insurance institutions are required to keep records for a minimum period of 6 years by the Guidance Note on Prevention of Money Laundering and Terrorist Financing. In addition, the ICO also requires insurers and insurance brokers to keep proper books of account.</p>
53	States Parties shall, in accordance with its domestic law, take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an corruption offence.	Although a foreign state is immune from the jurisdiction of the Hong Kong courts, such immunity can be waived. A foreign state may sue in HK and if it does so it will be deemed to have submitted to the jurisdiction. The submission to adjudication in any particular proceedings is usually also considered to extend to any appeal.

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54 and 55	States Parties shall establish procedures for international cooperation in confiscation matters. For instance, States Parties must permit their authorities to give effect to an order of confiscation issued by a court of another State Party, or permit their authorities to order the confiscation of such property of foreign origin by adjudication of money-laundering or other offences within their jurisdiction or by other procedures under domestic law. Upon a request by another State Party with jurisdiction over a corruption offence, States Parties must take measures to identify, trace and freeze or seize proceeds of crime, property, equipment for confiscation by the requesting State or by themselves.	<p>Hong Kong generally complies with the requirements by virtue of the provisions in Part VI of the MLAO.</p> <p>The confiscation measures are provided under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the OSCO and MLAO.</p> <p>Hong Kong can prosecute cases of money laundering and order confiscation of property of foreign origin, including cases involving the death, flight or absence of the offender.</p>
56 and 58	States Parties shall endeavour to enable themselves to forward information on proceeds of corruption offences to another State Party without prior request, when it considers that such disclosure might assist the receiving State Party in investigations, prosecutions or judicial proceedings. To that end, State Parties shall consider establishing a financial intelligence unit to be responsible for receiving, analyzing and disseminating reports of suspicious financial transactions.	A Joint Financial Intelligence Unit has been set up and operated by the Police and the Customs and Excise Department.
57	Return and disposal of assets	An Order under MLA Ordinance has been prepared to enable Hong Kong to return confiscated property, when acting on the request made by another State Party of UNCAC.
59	Bilateral and Multilateral agreements and arrangements	The requirement under this Article is optional. Hong Kong's network of bilateral extradition and mutual legal assistance agreements has been expanding to improve international cooperation against criminal activities.

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<i>Chapter VI – Technical Assistance and Information Exchange</i>		
60-62	This section includes provisions on training and technical assistance, material and human resources, research, and information sharing.	<p>The ICAC is compliant by virtue of local and overseas training/attachment programmes, attendance in international conferences/seminars, etc. which facilitate sharing of experiences with anti-corruption agencies in other jurisdictions.</p> <p>Report Centre of the ICAC is the designated contact point for providing international assistance in accordance with Article 6(3) of the Convention. DoJ is the designated contact point on matters relating to mutual legal assistance and international law.</p>
<i>Chapter VII – Mechanisms for Implementation</i>		
63-64	This section includes provisions on the establishment of a Conference of the State Parties to the Convention and a Secretariat for the Conference.	The 1 st Conference of State Parties was held in Jordan in December 2006. The 2 nd Conference of State Parties will be held in Indonesia in January/February 2008.
<i>Chapter VIII – Final Provisions</i>		
65- 71	This section includes provisions on the implementation of the Convention, the settlement of disputes, the signature, ratification, acceptance, approval and accession of the Convention, the date of which the Convention shall enter into force after the date of ratification, how amendments to the Convention shall be proposed, denunciation, the depository and the language of the Convention.	This matter is being dealt with by the State Parties concerned.

Administration Wing
Chief Secretary for Administration's Office
10 July 2007

Chapter:	455	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number	Version Date
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Schedule:	2	OTHER SPECIFIED OFFENCES	L.N. 145 of 2002	01/01/2003
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[sections 2, 8 & 31]
(Replaced 26 of 2002 s. 3)

Common law offences

1. manslaughter
2. conspiracy to defraud

Statutory offences

	Offence	Description*
3.	Import and Export Ordinance (Cap 60) section 14 section 14A section 18A section 35A	alteration of vessel, aircraft or vehicle for the purpose of smuggling construction, etc., of vessels for the purpose of smuggling assisting, etc., in export of unmanifested cargo assisting, etc., in carriage of prohibited, etc., articles
4.	Immigration Ordinance (Cap 115) section 37DA(1)	assisting unauthorized entrant to remain
5.	Dangerous Drugs Ordinance (Cap 134) section 5(1) section 9(1), (2) and (3) section 35(1) section 37(1)	supplying or procuring a dangerous drug to or for unauthorized persons offences relating to cannabis plant or opium poppy keeping or managing a divan for the taking of dangerous drugs permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
6.	Gambling Ordinance (Cap 148) section 14 section 15(1)	providing money for unlawful gambling or for an unlawful lottery permitting premises to be used as gambling establishment
7.	Registration of Persons Ordinance (Cap 177) section 7A	possession of forged identity cards
8.	Crimes Ordinance (Cap 200)	

section 72	copying a false instrument
section 73	using a false instrument
section 74	using a copy of a false instrument
section 76	making or possessing equipment for making a false instrument
section 99(1)	passing, etc. counterfeit notes and coins
section 101	making or custody or control of counterfeiting materials and implements
9. Prevention of Bribery Ordinance (Cap 201)	
section 4(1)	bribery of public servant
section 5(1)	bribery for giving assistance, etc. in regard to contracts
section 6(1)	bribery for procuring withdrawal of tenders
section 9(2)	bribery of agent
10. Theft Ordinance (Cap 210)	
section 12(1)	aggravated burglary
section 18A	obtaining services by deception
11. Offences against the Person Ordinance (Cap 212)	
section 19	wounding or inflicting grievous bodily harm
12. Criminal Procedure Ordinance (Cap 221)	
section 90(1)	doing an act with intent to impede apprehension or prosecution of offender

(Enacted 1994)

Note:* The short description of offences in this Schedule is for ease of reference only.

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	14 of 2003
Section:	4	Heading:	Bribery	Version Date:	09/05/2003

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's 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.

(2) Any public servant who, 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- (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's 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.

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	5	Heading:	Bribery for giving assistance, etc. in regard to contracts	Version Date:	30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant'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 aforesaid,

shall be guilty of an offence.

(2) Any public servant who, 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 (1) shall be guilty of an offence.

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	6	Heading:	Bribery for procuring withdrawal of tenders	Version Date:	30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for 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, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	9	Heading:	Corrupt transactions with agents	Version Date:	30/06/1997

(1) Any agent who, 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) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	25 of 1998; 1 of 2003
Section:	12	Heading:	Penalty for offences	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 1 of 2003 s. 3

(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable-

(a) on conviction on indictment-

(i) for an offence under section 10, to a fine of \$1000000 and to imprisonment for 10 years;

(ii) for an offence under section 5 or 6, to a fine of \$500000 and to imprisonment for 10 years; and

(iii) for any other offence under this Part, to a fine of \$500000 and to imprisonment for 7 years; and (Replaced 50 of 1987 s. 3)

(b) on summary conviction-

(i) for an offence under section 10, to a fine of \$500000 and to imprisonment for 3 years; and

(ii) for any other offence under this Part, to a fine of \$100000 and to imprisonment for 3 years, (Replaced 50 of 1987 s. 3)

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify. (Amended 28 of 1980 s. 5)

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$100000 and to imprisonment for 1 year, and shall be ordered to pay to the Government in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify. (Amended 9 of 1974 s. 4; 28 of 1980 s. 5; 1 of 2003 s. 3)

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Government- (Amended 1 of 2003 s. 3)

(a) a sum not exceeding the amount of the pecuniary resources; or

(b) a sum not exceeding the value of the property, the acquisition of which by him was not explained to the satisfaction of the court. (Added 9 of 1974 s.

4)

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. (Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)

(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. (Added 61 of 1980 s. 2)