

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 22 OF 2008

L.S.

Donald TSANG
Chief Executive
3 July 2008

An Ordinance 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.

[4 July 2008]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Prevention of Bribery (Amendment) Ordinance 2008.

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. Sections added

The following are 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 Members of the Legislative Council for them to consider whether to take any action under Article 73(9) of the Basic Law.

**31AB. Disclosure of information received
under section 31AA by Members
of Legislative Council etc.**

(1) Notwithstanding section 30, a Member of the Legislative Council may disclose any information received under section 31AA to the Secretary General 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.

(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).”.

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 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”.