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21 October 2009

Mr. Kelvin Lee
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Mr. Lee,

Re: Prevention of Bribery Ordinance
(Amendment of Schedule 1) Order 2009 (L.N. 179)

Thank you for your letter of 16 October 2009 concerning the Prevention of Bribery Ordinance (Amendment of Schedule 1) Order 2009. Having consulted the Director of Administration, I am pleased to provide below the Administration's response.

(a) Relevant consideration or criteria of including a committee/body in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) (POBO)

In considering whether or not a body should be specified as a public body under the POBO, public interest is the primary consideration. In defining public interest, the following factors are taken into consideration :-

- (i) whether the body is in receipt of substantial public funds;
- (ii) whether it has a monopoly or partial monopoly of a public service; and
- (iii) whether it is placed in a position of special trust by the Government.

Over the years, individual organizations have been added to Schedule 1 on a case-by-case basis having regard to the above general considerations. This approach has in general been effective.

(b) Inclusion of Minor Works Contractors Registration Committee (MWCRC) in Schedule 1 to POBO

According to the Building (Minor Works) Regulation (L.N. 51 of 2009), MWCRCs, comprising representatives from the building industry, will be appointed to assist the Building Authority (BA) in considering applications in relation to the registration of “registered minor works contractors”. The BA may refer the applications to a MWCRC for consideration and the Committee will recommend the BA to allow, defer or refuse the applications.

A MWCRC will conduct an interview with the applicant concerned. The applicant will be given a chance to present himself and make his case to the Committee. The MWCRC will also examine the personal and business information submitted by the applicant before making any recommendation to the BA.

The composition of MWCRCs is similar to that for the existing contractors registration committees established under the BO. In general, the criteria for nomination of members to MWCRCs will be:

- (i) professional experience in the minor works industry; and
- (ii) knowledge of the statutory requirements.

As pointed out in the LegCo Brief entitled “Subsidiary Legislation and Technical Memorandum for Implementation of Minor Works Control

System” issued on 7 October 2009 (ref. DEVB (PL-B) 30/30/120), under the POBO, the existing list of "public body" in Schedule 1 includes four registration committees established under the BO, namely the Authorized Persons Registration Committee, Structural Engineers Registration Committee, Geotechnical Engineers Registration Committee and Contractors Registration Committee. A MWCRC is an advisory registration committee with a nature similar to the aforesaid Committees for building professionals and contractors being covered by the POBO.

Given the role and nature of the MWCRC and its position of special trust by the Government (the aforementioned criterion (iii) for including a committee in Schedule 1 to the POBO), the Administration considers that the MWCRC should be included in the list of “public bodies” from the public interest point of view.

Please contact the undersigned should you require any further clarifications.

Yours sincerely,

(Daniel Fong)
for Secretary for Development

cc.

Director of Buildings (Attn: Mr S T Lam)

Director of Administration (Attn: Miss Amy Wong)