

**Subcommittee on Prevention of Bribery Ordinance  
(Amendment of Schedules 1 and 2) Order 2012**

**Administration's Response to Issues Arising from  
the Sub-committee Meeting on 30 March 2012**

**Purpose**

At Members' request at the Sub-committee meeting on 30 March 2012, this paper briefs Members on the position of public bodies and public servants under the Prevention of Bribery Ordinance (Cap. 201) (POBO).

**Background**

2. POBO contains provisions for prohibiting in certain circumstances the offer, solicitation or acceptance of advantages by any person. Some provisions target persons employed in the public sector and some target persons employed in the private sector. In respect of the public sector, POBO creates a broad class of employees known as "public servants", covering, amongst others, principal officials, judicial officers, civil servants and employees of public bodies listed under its Schedule 1.

**Position of Public Servants under POBO**

3. POBO has specific provisions to govern the conduct of public servants. For instance, sections 4 and 5 create offences in relation to "public servants", as follows —

- (a) Section 4(2) makes it an offence for any public servant, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for or otherwise on account of his acting in his capacity as a public servant; and

(b) Section 5(2) makes it an offence for any public servant, without lawful authority or reasonable excuse, to 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.

4. In addition, POBO also imposes specific restrictions on persons dealing with public bodies. Section 4(1) makes it an offence for any person to offer an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant acting in his capacity as a public servant. Section 5(1) makes it an offence for any person to offer an advantage to a public servant as an inducement to or reward for or otherwise on account of giving assistance in regard to public sector contracts. Section 6 makes it an offence for any person to offer an advantage to any other person as an inducement to or 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; whereas section 7 makes it an offence for any person to offer an advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining from bidding at any auction conducted by or on behalf of any public body. Section 8(2) makes it an offence for any person having dealings with public bodies to offer an advantage to a public servant, without the need to prove a corrupt purpose.

### **Retrospective Effect**

5. Members are concerned that as the amendments carry no retrospective effect, impropriety committed prior to the designation of the four organisations as public bodies could not be pursued under POBO. As mentioned in paragraph 2, some anti-corruption provisions in POBO target persons employed in both the public and private sectors. Section 9, for instance, makes it an offence for any agent (including a public servant and any person employed by or acting for another) to, without lawful authority or reasonable excuse, solicit or accept an advantage. Hence, impropriety committed before the organisations become public bodies may still be actionable under section 9.

## **Outsourcing**

6. Members suggested that outsourced contractors of public bodies should also be subject to a level of probity. Currently, the four organisations only contract out non-core operations such as security and cleansing services. They have no plan to contract out core operations such as leasing and incubation programmes which require screening, evaluation and selection.

7. Upon designation as public bodies, the four organisations will be advised to include a probity clause in their outsourcing contracts notifying their counter-parties that they are public bodies under POBO and requiring by way of contract their service contractors to observe stipulated probity guidelines.

**Office of the Government Chief Information Officer  
Commerce and Economic Development Bureau  
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