

## **LEGISLATIVE COUNCIL BRIEF**

Prevention of Bribery Ordinance  
(Chapter 201)

### **Prevention of Bribery Ordinance (Amendment of Schedules 1 & 2) Order 2016**

#### **INTRODUCTION**

At the meeting of the Executive Council on 10 May 2016, the Council **ADVISED** and the Chief Executive **ORDERED** that, under section 35 of the Prevention of Bribery Ordinance (Chapter 201) (POBO), the Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2016 (the Amendment Order) at Annex A should be made to include –

- (a) each of the Hong Kong Green Building Council Limited (HKGBCL) and the BEAM Society Limited (BSL) in Schedule 1 to the POBO as a “public body”; and
- (b) each of the HKGBCL and the BSL in Schedule 2 to the POBO for the purpose of invoking the introductory words and paragraph (aa) of the definition of “public servant” under the POBO.

#### **JUSTIFICATIONS**

##### ***Corruption Prevention Regime over Public Bodies***

2. The POBO provides the statutory framework for anti-corruption control. “Public bodies” and “public servants” as defined in the POBO are subject to more stringent control than other private organisations. In particular, there are offence provisions under the POBO that apply specifically to dealings with public bodies and acts of public servants. Relevant provisions in the Independent Commission Against Corruption Ordinance (Chapter 204) (ICACO) also empower the Independent Commission Against Corruption (ICAC) to examine the practices and procedures of public bodies and gain access to their relevant records and documents to facilitate discovery of corrupt practices. The definition of “public body” and “public servant” under the POBO, and the anti-

corruption control provisions under the POBO and the ICACO applicable to public bodies are at Annex B.

3. The ICAC regularly reviews with bureaux/departments the need in the public interest to include any existing entity in the latter's purview as a public body under the POBO, having regard to whether the entity –

- (a) receives substantial public funds;
- (b) has a total or partial monopoly of a public service; or
- (c) is placed in a position of special trust by the Government.

### *Certification of Green Buildings*

4. “Building Environmental Assessment Method (BEAM) Plus” is currently Hong Kong's unique assessment system for holistic green building certification. In response to the recommendations of the Council for Sustainable Development, the Government has been implementing a package of measures since April 2011 that aim to foster a quality and sustainable built environment in Hong Kong. Among others, to promote green building certification in private building development projects, the Building Authority (BA) requires a project to be registered for certification under the BEAM Plus as a prerequisite for applying for gross floor area (GFA) concessions for its green, amenity and non-essential/mandatory (GANEM) features<sup>1</sup>.

### *Corporate Profiles of HKGBCL and BSL*

5. The HKGBCL was founded in November 2009 with the primary object of promoting the standards, development and awareness of sustainable buildings for environmental protection and the public interest of Hong Kong. It is a company limited by guarantee and is a non-profit organisation. It has four founding members (*viz.* the Construction Industry Council, the BSL, the Business Environment Council (BEC), and the Professional Green Building Council), over 120 institutional members and more than 680 associate members. The HKGBCL is now a leading industry-based body in developing and promoting practical solutions, standards and guidelines of green construction,

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1 GANEM features include (a) **green features** such as balconies, communal podium gardens, utility platforms, acoustic fins and noise barriers, and non-structural prefabricated external walls; (b) **amenity features** such as guard rooms, owners' corporation office, swimming pool filtration plant rooms, covered landscaped and play area, larger lift shafts and covered walkways; and (c) **non-essential and non-mandatory features** such as boiler rooms and their pipe/air ducts, voids in cinemas and main prestige entrances.

retrofitting, operation and maintenance for Hong Kong's built environment. Its 25 Board Directors are vested with the responsibility for the conduct and management of its corporate affairs, and the Board appoints a number of standing committees to take charge of different designated aspects of its corporate affairs. Members of these committees comprise Board Directors, members nominated by the founding members, co-opted members and government advisors. The HKGBCL has about 40 employees at present.

6. The BSL is a company limited by guarantee incorporated in November 2010, and evolved from the BEAM Steering Group formed by the Real Estate Developers Association of Hong Kong, the then Planning, Environment and Lands Branch, Swire Properties, HongKong Land, the Hong Kong Polytechnic University, and the BEC in 1995. It is a non-profit organisation that founded, owns, administers and seeks to promote and develop BEAM for building assessment, performance improvement across buildings' whole life cycle, certification and labelling; and administers a professional training scheme in the interest of fostering an eco-friendly living environment. Its current membership comprises about 220 ordinary members and over 160 associate members. The responsibility for the day-to-day management and control of its properties and affairs is vested upon its 26 Board Directors, seven of whom concurrently form the management committee that holds overall accountability for the BSL as an entity and for the execution of Board resolutions. The Board of Directors also appoints a number of functional committees or task forces, which mainly comprise Board Directors and other BSL members, to take charge of particular functions of the BSL's corporate affairs. The BSL currently has a staff of 25 employees.

7. Since BEAM evolved into BEAM Plus in 2010, the certification tool has been jointly administered by the HKGBCL and the BSL, and both organisations play an integral role in the certification process. In gist, to obtain a BEAM Plus rating for a project, the applicant should first register with the HKGBCL, upon which the BSL would assign and engage experts to evaluate the project on the BSL's behalf. The experts' assessment summary and recommendations would be submitted to the Technical Review Committee of the BSL for consolidation and approval, and then to the HKGBCL for certification in accordance with the procedures laid down by its Green Labelling Committee. If the applicant is not satisfied with the assessment or the rating given to the project after the assessment, they may seek a review by first the BSL and finally by the HKGBCL. Over 600 private projects have registered for BEAM Plus between the implementation of the new GFA concession policy in April 2011 and end-February 2016.

### ***Designating HKGBCL and BSL as public bodies***

8. BEAM Plus is currently the only green building certification system recognised by the BA for the purpose of granting GFA concessions for GANEM features in private building development projects. Considering that GFA concessions are matters of major public interest and substantial commercial and monetary interests are involved, the ICAC recommends that the HKGBCL and the BSL be included as public bodies under the POBO. We agree with the recommendation, and believe that bringing the HKGBCL and the BSL under the more stringent anti-corruption control regime for public bodies under the POBO will enhance the robustness of the BA's overall GFA concession regime and uphold public trust in the integrity of BEAM Plus.

9. The Amendment Order designates the HKGBCL and the BSL as public bodies under the POBO by including them in Schedule 1 to the POBO, thereby subjecting them to more stringent anti-corruption control.

10. The ICAC has examined the corporate structures and the distribution of control and management responsibilities among the various classes of members, directors and staff of the HKGBCL and the BSL, and recommended including the following individuals as public servants -

- (a) members of the respective governing body (i.e. the Board of Directors) and all office holders (other than honorary office holders) of the HKGBCL and the BSL;
- (b) members of any council, board, committee or other constituent body of HKGBCL and BSL which are vested with any responsibility for the conduct or management of HKGBCL's and BSL's affairs respectively. This would include members of the Technical Review Committee of the BSL and the Green Labelling Committee of the HKGBCL mentioned in paragraph 7 above, which serve assessment and certification functions under BEAM Plus; and
- (c) all employees of HKGBCL and BSL other than those covered under (a) and (b) above.

11. To achieve the intended effect, in addition to including the HKGBCL and the BSL in Schedule 1 to the POBO, the two entities will also be included in Schedule 2 to the POBO.

## **THE AMENDMENT ORDER**

12. The main provisions of the Prevention of Bribery Ordinance (Amendment of Schedules 1 & 2) Order 2016 are –

- (a) Clause 1 prescribes 15 July 2016 as the commencement date of the Amendment Order, which has no retrospective effect;
- (b) Clause 2 amends Schedule 1 to the POBO by adding the HKGBCL and the BSL thereto so as to include these two entities as public bodies; and
- (c) Clause 3 amends Schedule 2 to the POBO by adding the HKGBCL and the BSL thereto such that, as well as their employees, all office holders (other than honorary ones) and all members of any council, board, committee or other body of the entities which is vested with any responsibility for the conduct or management of the affairs of the respective entity are included as public servants.

## **LEGISLATIVE TIMETABLE**

13. The legislative timetable is as follows –

Publication in the Gazette	20 May 2016
Tabling the Order at the Legislative Council for negative vetting	25 May 2016
Commencement	15 July 2016

## **IMPLICATIONS OF THE AMENDMENT ORDER**

14. The Amendment Order is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the POBO. It has no civil service implications for the BA/Buildings Department; and no financial, productivity, sustainability, family, gender, or competition implications. The ICAC has also confirmed that no significant resource implications would be involved for extending the work and support for public bodies to two more entities.

15. The economic and environmental implications of the Amendment Order are contingent upon the extent to which the proposal would affirm public and stakeholder confidence in BEAM Plus. If the public, especially prospective property buyers, trusts and attaches importance to the BEAM Plus ratings of new building development projects, more projects would undergo such certification in anticipation of an enhanced value to the projects, the process of which can ensure that the buildings have in place a sustainable system that minimises environmental impact and ecological footprint through enhanced consumption efficiency.

## **PUBLIC CONSULTATION**

16. The Boards of Directors of the HKGBCL and the BSL have been consulted and agreed with the proposal.

## **PUBLICITY**

17. The Amendment Order will be published in the Gazette on 20 May 2016.

## **ENQUIRIES**

18. Enquiries on this Brief can be directed to Mr Arsene Yiu, Principal Assistant Secretary (Planning and Lands) at 3509 8806 by phone.

**Development Bureau**  
**May 2016**

**Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2016**

(Made by the Chief Executive in Council under section 35 of the Prevention of Bribery Ordinance (Cap. 201))

**1. Commencement**

This Order comes into operation on 15 July 2016.

Clerk to the Executive Council

**2. Prevention of Bribery Ordinance amended**

The Prevention of Bribery Ordinance (Cap. 201) is amended as set out in sections 3 and 4.

COUNCIL CHAMBER

2016

**3. Schedule 1 amended (public bodies)**

Schedule 1—

**Add**

“129. Hong Kong Green Building Council Limited.

130. BEAM Society Limited.”

**4. Schedule 2 amended (public bodies specified for purposes of definition of *public servant*)**

Schedule 2—

**Add**

“10. Hong Kong Green Building Council Limited.

11. BEAM Society Limited.”

### Explanatory Note

This Order amends Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) to specify “Hong Kong Green Building Council Limited” and “BEAM Society Limited” (*the companies*) as public bodies for the purposes of the Ordinance. The Order also amends Schedule 2 to the Ordinance to specify the companies as public bodies for the purposes of paragraph (aa) of the definition of *public servant* in the Ordinance.

**Relevant Provisions and the Anti-corruption Control over Public Bodies under the Prevention of Bribery Ordinance (Chapter 201) and the Independent Commission Against Corruption Ordinance (Chapter 204)**

**Definitions of “Public Body” and “Public Servant”**

Under section 2(1) of the Prevention of Bribery Ordinance (Chapter 201) (POBO) –

- a **“public body (公共機構)”** means: (a) the Government; (b) the Executive Council; (c) the Legislative Council; (d) any District Council; (e) any board, commission, committee or other body, whether paid or unpaid appointed by or on behalf of the Chief Executive (CE) or the CE-in-Council; and (f) any board, commission, committee or other body specified in Schedule 1 [to POBO]; and
- a **“public servant (公職人員)”** means any prescribed officer (*i.e.* a permanent or temporary office-holder of emolument under the Government; Principal Officials under the Basic Law, the Monetary Authority and staff appointed under the relevant Ordinance, Chairman of the Public Service Commission; staff of the Independent Commission Against Corruption (ICAC), judicial officers appointed under the relevant Ordinance or by the Chief Justice, and Judiciary staff); any employee of a public body and –

For public bodies specified in Schedule 2	any non-honorary office holder; or any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of its affairs; or
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For public bodies being clubs or associations	any member who is a non-honorary office holder of the public body or is vested with any responsibility for the conduct or management of its affairs (excluding those only having a right to vote at meetings); or
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For public bodies being educational institutions under any Ordinance	unless otherwise specified by the CE, any officer of the institution, or any member of any council, board, committee or other body of the institution being itself a public body, or established under an Ordinance and vested with any responsibility for the conduct or management of its affairs not being purely social, recreational or cultural.
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- Merely being a shareholder in a company or having voting rights at meetings of a club or association which is a public body does not constitute the person concerned a public servant.

## **Enhanced Anti-corruption Control over “Public Bodies” and “Public Servants”**

Both public bodies and public servants are subject to stricter controls under the POBO and the ICACO in the following areas as compared to their private counterparts –

### **POBO**

- public servants are liable to bribery offences in relation to their performance of an act (section 4) and for giving assistance, etc. in regard to contracts (section 5);
- bribery for procuring withdrawal of tenders (section 6) and in relation to auctions (section 7) is applicable to anyone dealing with tenders/auctions of public bodies;
- bribery of public servants by persons having dealings with public bodies is applicable to anyone having dealings with public bodies (section 8); and
- public servants are subject to an additional offence of not co-operating with the law enforcement agency (section 16);

### **ICACO**

Commissioner, ICAC has the duty/power to -

- examine the practices and procedures of public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices (section 12(d));
- advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices (section 12(f)); and
- access to such records, books and other documents in the possession or under the control of a public body as the Commissioner reasonably considers will reveal the practices and procedures of that public body; and to photograph or make copies of such records (section 13(2)(b)&(c)).

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