

LEGISLATIVE COUNCIL BRIEF

Prevention of Bribery Ordinance (Cap. 201)

PREVENTION OF BRIBERY (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 9 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Prevention of Bribery (Amendment) Bill 1999 (copy at Annex A) should be introduced into the Legislative Council to amend the definition of “public servant” in section 2(1) of the Prevention of Bribery Ordinance (POBO) (Cap. 201) and to specify The Stock Exchange of Hong Kong Limited (SEHK), the Hong Kong Futures Exchange Limited (HKFE) and their clearing houses as public bodies under the Ordinance.

BACKGROUND AND ARGUMENT

The Stock Exchange, the Futures Exchange and their clearing houses

2. Despite the significant role of the SEHK, the HKFE and their clearing houses in Hong Kong’s financial market, they are not yet specified as public bodies under the POBO. It is proposed that they should be made public bodies so that they could be put under more stringent control.

3. The SEHK has a statutory monopoly under the Stock Exchanges Unification Ordinance (Cap. 361) to operate a stock market in Hong Kong. Its functions, including approving listing applications, regulating broker members and ensuring a fair trading market, significantly affect the investing public. Membership of the SEHK is restricted to shareholders who are brokers. Management of the SEHK rests with its Council which comprises 18 elected representatives of the SEHK’s members and 11 members who are not “members” of the SEHK under Cap. 361 (including nine members appointed by the SEHK in consultation with

the Securities and Futures Commission from listed companies and market users, and two independent persons appointed by the Chief Executive). The chief executive officers of the SEHK and the Hong Kong Securities Clearing Company Limited are ex-officio members of the Council.

4. The HKFE is licensed by the Chief Executive under the Commodities Trading Ordinance (Cap. 250). It operates a trading market for futures and options contracts based on the Hang Seng Index and Hang Seng China - Affiliated Corporations Index and a range of individual company stocks. Like the SEHK, the HKFE's functions also have a significant impact on the investing public. Membership of the HKFE is restricted to shareholders who are brokers. Management of the HKFE is the responsibility of its Board. It comprises eight representatives from the HKFE's members, four independent directors appointed by the Board after consultation with the Securities and Futures Commission, as well as the chief executive of the HKFE as ex-officio member.

5. There are three clearing houses performing clearing and settlement functions for the two Exchanges (the SEHK and HKFE). Their details are as follows -

- (a) **Hong Kong Securities Clearing Company Limited (HKSCC):** It is limited by a guarantee provided by the SEHK and five banks. It is managed by a Board comprising 22 directors appointed by the SEHK, five member banks and the Financial Secretary.
- (b) **The SEHK Options Clearing House Limited (SEOCH):** It is wholly owned by the SEHK. The SEOCH is managed by a Board comprising 10 directors appointed by the SEHK and the Securities and Futures Commission.
- (c) **Hong Kong Futures Exchange Clearing Corporation Limited (HKFECC):** It is wholly owned by the HKFE. It is managed by a Board comprising 13 directors appointed by the HKFE and the Securities and Futures Commission.

6. The three clearing houses (the HKSCC, SEOCH and HKFECC) provide clearing facilities for users through registration with the respective clearing houses. At present, the HKSCC has 1 746 investor participants and 564 market intermediaries. They are collectively known as participants. The SEOCH has 67 direct clearing members and two general

clearing members. The HKFECC has 114 individual clearing members and five general clearing members. These users are members of the respective clearing houses, but are not involved in the management of the clearing houses.

Public Bodies

7. At present, employees and members of organizations specified as public bodies under the POBO are “public servants” and the Ordinance provides for more stringent control over them than employees and members of other organizations. The Corruption Prevention Department of the Independent Commission Against Corruption gives special attention to public bodies and assists them in reviewing their procedures to prevent corruption. Apart from the Government, the Executive Council, the Legislative Council, the Municipal Councils, the District Boards and other boards, commissions or committees appointed by or on behalf of the Chief Executive or the Chief Executive in Council, a total of 88 other organizations listed in the Schedule to the POBO are also specified as “public bodies”. A copy of the Schedule is at Annex B.

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

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

9. Given the importance of the two Exchanges and the three clearing houses in Hong Kong’s financial markets, we are of the view that it will be in the public interest to specify them as public bodies under the POBO so that those persons who are vested with responsibility for the conduct or management of the affairs of these bodies could be made “public servants” under the POBO and be put under more stringent control. In this regard, we need to take into account two issues, namely :

- (a) that the ordinary broker members of the Exchanges and the ordinary clearing members of the clearing houses are not involved in the conduct or management of the affairs of these bodies; and
- (b) that not all the persons responsible for the conduct or management of the affairs of the Exchanges and the clearing houses are “members” of these bodies.

10. At present, all members of a public body (other than a club, association or educational institution) are “public servants” under the POBO. In the case of a club or association which is a public body, only the employees, office holders and members vested with responsibilities for the conduct or management of the body’s affairs are “public servants”. In the case of an educational institution which is a public body, its employees, officers of the institution and members of the council/board/committees of the institution vested with responsibilities for the conduct or management of the institution’s affairs are classified as “public servants”. The current definition of “public servant” is reproduced at Annex C. There is, however, no equivalent provision qualifying the definition of “public servant” in respect of a public body which is not a club, association or educational institution, as is the case of the two Exchanges and the three clearing houses.

11. It is therefore necessary to introduce a new category under the definition of “public servant” in the POBO to specify that all employees of the two Exchanges and the three clearing houses as well as persons on the Council/Board/Committees of these bodies, including those who are not members of these bodies but who are vested with management responsibilities, are “public servants”. The definition should ensure that the ordinary broker members of the Exchanges and the ordinary clearing members of the clearing houses are excluded from the definition of “public servant” since they are not involved in the management of these bodies.

The Proposal

12. It is proposed that the POBO be amended to make the two Exchanges (the SEHK and HKFE) and their clearing houses (the HKSCC, SEOCH and HKFECC) public bodies under the POBO.

13. It is also proposed that the definition of “public servant” under the POBO be amended to provide for an additional Schedule (Schedule 2) for listing public bodies in respect of which only their employees, office holders, and persons vested with any responsibility for the conduct or management of the affairs of the public body will become public servants. The two Exchanges and the three clearing houses should be so listed in Schedule 2.

14. A few other minor amendments to the existing Schedule of public bodies are also proposed. These are mainly nomenclature changes and technical amendments.

THE BILL

15. The main provisions of the Bill are summarized as follows -

- (a) Clause 2 of the Bill amends the definition of a “public servant” in Section 2(1) of the POBO so that in the case of a public body specified in a new Schedule 2, the public servants are its employees, office holders 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 the affairs of the public body.
- (b) Clause 6 renumbers the existing Schedule as Schedule 1, and adds the two Exchanges and the three clearing houses to the Schedule so as to specify them as public bodies.
- (c) Clause 6 also makes some technical amendments to the existing Schedule, the more significant of which are -
 - (i) Item 1 “Cable and Wireless (Hong Kong) Limited” is repealed and substituted by “Hong Kong Telecom International Limited” to reflect the change in the name of the company.
 - (ii) Item 3 “China Motor Bus Company Limited” (CMB) is repealed as the CMB ceased to be a bus franchisee with effect from 1 September 1998.

- (iii) Item 41 “The Jubilee Sports Centre Board” is repealed. The Board became defunct when the Jubilee Sports Centre was re-named the Hong Kong Sports Institute on 1 April 1991. The Institute has since 1 April 1994 come under the management of the “Hong Kong Sports Development Board”, which is already a scheduled public body (Item 54).
 - (iv) Item 56 “Travel Industry Council Reserve Fund” is repealed. The Fund has been taken over by the “Travel Industry Compensation Fund Management Board” which is already a scheduled public body (Item 69).
- (d) Clause 7 adds a Schedule 2 to the POBO, and lists the two Exchanges and the three clearing houses in the new Schedule.

PUBLIC CONSULTATION

16. The two Exchanges and the three clearing houses have agreed to become public bodies, with the proviso that their ordinary members not involved in the management of these bodies will not become public servants. The Security Panel of the Legislative Council has also been consulted on the proposal at its meeting on 11 February 1999 and its Members have no special comments on the proposal.

BASIC LAW IMPLICATIONS

17. The Department of Justice advises that the proposed Bill is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

18. The Department of Justice advises that the proposed Bill has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

19. There are no financial or staffing implications. Any additional workload arising from implementation of the Bill will be absorbed by the Independent Commission Against Corruption.

BINDING EFFECT OF THE LEGISLATION

20. The amendments will not affect the current binding effect of the principal Ordinance.

LEGISLATIVE TIMETABLE

21. The legislative timetable of the Bill will be -

Publication in the Gazette	19 March 1999
First Reading and commencement of Second Reading debate	31 March 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

22. A press release will be issued on 18 March 1999. A spokesman will be available for answering media enquiries.

OTHERS

23. Enquiries concerning this brief should be directed to Mr Stephen Fisher, Deputy Director of Administration, on 2810 2268.

Administration Wing
Chief Secretary for Administration's Office
18 March 1999

A BILL

To

Amend the Prevention of Bribery Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Prevention of Bribery (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Chief Secretary for Administration by notice in the Gazette.

2. Interpretation

Section 2(1) of the Prevention of Bribery Ordinance (Cap. 201) is amended -

(a) in the definition of “public body”, in paragraph (f), by repealing “the Schedule” and substituting “Schedule 1”;

(b) in the definition of “public servant”-

(i) in paragraph (a), by adding “(aa),” after “paragraph”;

(ii) by adding -

“(aa) in the case of a public body specified in

Schedule 2 -

(i) an office holder of the public body (other than

- an honorary office holder);
- (ii) 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 the affairs of the public body;”.

3. Offence to disclose identity, etc. of persons being investigated

Section 30(2)(f) is amended by repealing “各” and substituting “向”.

4. Effect of conviction of an offence under this Ordinance

Section 33(b) is amended by repealing “the Schedule” and substituting “Schedule 1”.

5. Amendment of Schedules

Section 35 is amended by repealing “Schedule” and substituting “Schedules”.

6. Public bodies

The Schedule is amended -

- (a) by repealing “SCHEDULE” and substituting “SCHEDULE 1”;
- (b) by repealing item 1 and substituting -
 - “1. Hong Kong Telecom International Limited.”;
- (c) by repealing item 3;
- (d) by repealing item 4 and substituting -
 - “4. The Chinese University of Hong Kong.”;
- (e) in item 30, by repealing “Royal”;
- (f) by repealing item 41;
- (g) by repealing item 56;
- (h) by repealing item 84 (Long Win Holdings Limited) and substituting -
 - “84. Long Win Bus Company Limited.”;
- (i) by renumbering item 84 (Long-term Prison Sentences Review Board) as item 84A;
- (j) by adding -
 - “91. The Stock Exchange of Hong Kong Limited.
 - 92. Hong Kong Futures Exchange Limited.
 - 93. Hong Kong Securities Clearing Company Limited.
 - 94. The SEHK Options Clearing House Limited.
 - 95. HKFE Clearing Corporation Limited.”.

7. Schedule added

The following is added -

“SCHEDULE 2

[ss. 2(1) & 35]

PUBLIC BODIES SPECIFIED FOR PURPOSES
OF DEFINITION OF “PUBLIC SERVANT”

1. The Stock Exchange of Hong Kong Limited.
2. Hong Kong Futures Exchange Limited.
3. Hong Kong Securities Clearing Company Limited.
4. The SEHK Options Clearing House Limited.
5. HKFE Clearing Corporation Limited.”.

Explanatory Memorandum

The purpose of this Bill is -

- (a) to amend the definition of “public servant” in section 2(1) of the Prevention of Bribery Ordinance (Cap. 201) so that any employee or office holder of a public body specified in Schedule 2 to the Ordinance or any member of any council, board, committee or other body of that public body vested with any responsibility for the conduct or management of the affairs of that public body is a public servant (clause 2(b));
- (b) to make consequential amendments to sections 2(1) (definition of “public body”), 33(b) and 35 respectively (clauses 2(a), 4 and 5);
- (c) to rectify a textual error in the Chinese text of section 30(2)(f) (clause 3);
- (d) to amend the Schedule to the Ordinance to renumber it as Schedule 1, make nomenclature changes, rectify an

error in the numbering of an item, and make The Stock Exchange of Hong Kong Limited, the Hong Kong Futures Exchange Limited, the Hong Kong Securities Clearing Company Limited, The SEHK Options Clearing House Limited and the HKFE Clearing Corporation Limited public bodies for the purposes of the Ordinance (clause 6);

- (e) to add a Schedule 2 to the Ordinance (clause 7).

Chapter: 201	Title: PREVENTION OF BRIBERY ORDINANCE	Gazette Number: L.N. 16 of 1999
Schedule: 1	Heading: PUBLIC BODIES	Version Date: 22/01/1999

[sections 2(1) & 35]

1. Cable and Wireless (Hong Kong) Limited. (Replaced L.N. 75 of 1982)
2. China Light and Power Company Limited.
3. China Motor Bus Company Limited.
4. Chinese University of Hong Kong.
5. Hong Kong Arts Development Council. (Replaced 26 of 1995 s. 19)
6. Cross-Harbour Tunnel Company Limited.
7. Fish Marketing Organization.
8. Hong Kong and China Gas Company Limited.
9. Hong Kong and Yaumati Ferry Company Limited.
10. Hong Kong Air Cargo Terminals Limited.
11. Hong Kong Building and Loan Agency.
12. Hong Kong Commercial Broadcasting Company Limited.
13. Hong Kong Electric Company Limited.
14. Hong Kong Export Credit Insurance Corporation.
15. Hong Kong Housing Authority.
16. Hong Kong Housing Society.
17. (Repealed 50 of 1987 s. 13)
18. The Hong Kong Polytechnic University. (Replaced 94 of 1994 s. 23)
19. Hong Kong Productivity Council.
20. Hong Kong Settlers Housing Corporation Limited.
21. Hong Kong Telephone Company Limited.
22. Hong Kong Tourist Association.
23. Hong Kong Trade Development Council.

24. Hong Kong Tramways Limited.
25. Kowloon Motor Bus Company (1933) Limited.
26. (Repealed L.N. 249 of 1990)
27. Ocean Park Corporation. (Amended 35 of 1987 s.40)
28. Peak Tramways Company Limited.
29. Asia Television Limited. (Replaced L.N. 31 of 1983)
30. Royal Hong Kong Jockey Club.
31. The Hong Kong Jockey Club (Charities) Limited. (Replaced L.N. 512 of 1994)
32. “Star” Ferry Company Limited.
33. Television Broadcasts Limited.
34. The Community Chest of Hong Kong.
35. University of Hong Kong.
36. Vegetable Marketing Organization.
37. Mass Transit Railway Corporation. (Added 36 of 1975 s. 31)
38. The Hong Kong Industrial Estates Corporation. (Added 17 of 1976 s. 13. Amended 16 of 1977 s. 43)
39. The Hong Kong Examinations Authority. (Added 23 of 1977 s. 17)
40. Consumer Council. (Added 56 of 1977 s. 22)
41. The Jubilee Sports Centre Board. (Added 57 of 1977 s. 27)
42. The Vocational Training Council. (Added 6 of 1982 s. 25)
43. The Kowloon-Canton Railway Corporation. (Added 73 of 1982 s. 39)
44. New Lantao Bus Company (1973) Limited. (Added L.N. 160 of 1983)
45. Hong Kong Baptist University. (Added 50 of 1983 s. 34. Amended 93 of 1994 s. 39)
46. City University of Hong Kong. (Added 65 of 1983 s. 25. Amended 92 of 1994 s. 32)
47. The Hong Kong Academy for Performing Arts. (Added 38 of 1984 s. 28)
48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)

50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)
51. Land Development Corporation. (Added 71 of 1987 s. 20)
52. Securities and Futures Commission. (Added 10 of 1989 Schedule 2)
53. The Open University of Hong Kong. (Added 22 of 1987 Schedule 2. Amended L.N. 176 of 1989. Replaced 50 of 1997 s. 29)
54. Hong Kong Sports Development Board. (Added 8 of 1990 s. 18)
55. Travel Industry Council of Hong Kong. (Added L.N. 62 of 1990)
56. TIC Reserve Fund. (Added L.N. 62 of 1990)
57. Hong Kong Council for Academic Accreditation. (Added 15 of 1990 s. 26)
58. The Hospital Authority (including any committee established by the Hospital Authority). (Added 68 of 1990 s. 24)
59. The Airport Authority. (Added L.N. 249 of 1990. Replaced 71 of 1995 s. 49)
60. Metro Broadcast Corporation Limited. (Added L.N. 184 of 1991)
61. Hong Kong Academy of Medicine. (Added 55 of 1992 s. 16)
62. Lingnan College. (Added 72 of 1992 s. 29)
63. Citybus Limited. (Added L.N. 330 of 1992)
64. New Hong Kong Tunnel Company Limited. (Added L.N. 382 of 1992)
65. Tate's Cairn Tunnel Company Limited. (Added L.N. 382 of 1992)
66. Hong Kong Industrial Technology Centre Corporation. (Added 21 of 1993 s. 25)
67. (Repealed 134 of 1997 s. 85)
68. Tradelink Electronic Commerce Limited. (Replaced L.N. 125 of 1998)
69. Travel Industry Compensation Fund Management Board. (Added 51 of 1993 s. 8)
70. Western Harbour Tunnel Company Limited. (Added 72 of 1993 s. 71)
71. Wharf Cable Limited. (Added L.N. 384 of 1993)
72. The Legislative Council Commission. (Added 14 of 1994 s. 24)
73. The Hong Kong Institute of Education. (Added 16 of 1994 s. 25)
74. Hong Kong Quality Assurance Agency. (Added L.N. 409 of 1994)
75. Equal Opportunities Commission. (Added 67 of 1995 s. 91)

76. The Security and Guarding Services Industry Authority. (Added 97 of 1994 s. 34)
77. Legal Aid Services Council. (Added 17 of 1996 s. 14)
78. Route 3 (CPS) Company Limited. (Added 33 of 1995 s. 65)
79. Privacy Commissioner for Personal Data. (Added 81 of 1995 s. 72)
80. Authorized Persons Registration Committee. (Added 54 of 1996 s. 27)
81. Structural Engineers Registration Committee. (Added 54 of 1996 s. 27)
82. Contractors Registration Committee. (Added 54 of 1996 s. 27)
83. The Estate Agents Authority. (Added 48 of 1997 s. 57)
84. Long Win Holdings Limited. (Added L.N. 441 of 1996)
84. Long-term Prison Sentences Review Board. (Added 86 of 1997 s. 44)
85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)

(Replaced L.N. 272 of 1974)

Chapter: 201	Title: PREVENTION OF BRIBERY ORDINANCE	Gazetten Number:
Section: 2	Heading: Interpretation	Version Date: 30/06/1997

“public servant” (公職人員) means any Crown servant and also any employee of a public body and- (Amended 48 of 1996 s. 2)

- (a) in the case of a public body other than a body referred to in paragraph (b) or (c) of this definition, any member of the public body;
- (b) in the case of a public body which is a club or association, any member of the public body who-
 - (i) is an office holder of the body (other than an honorary office holder); or
 - (ii) is vested with any responsibility for the conduct or management of its affairs;
- (c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the institution and, subject to subsection (3), any member of any council, board, committee or other body of the institution, which is itself a public body, or which-
 - (i) is established by or under the Ordinance relating to the institution;
 - (ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and
 - (iii) is not excluded under subsection (3),
 whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but-
 - (A) the holding of a share by a person in a company which is a public body; or
 - (B) the entitlement of a person to vote at meetings of a club or association which is a public body,
 shall not of itself constitute that person a public servant; (Replaced 50 of 1987 s. 2)