

立法會
Legislative Council

LC Paper No. LS 141/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 16 April 1999**

**Legal Service Division Report on
Prevention of Bribery (Amendment) Bill 1999**

Object s of the Bill

The main objects of the Bill are to:

- (a) add the Stock Exchange of Hong Kong Limited (“the SEHK”), Hong Kong Futures Exchange Limited (“HKFE”), Hong Kong Securities Clearing Company Limited (“HKSCC”), the SEHK Options Clearing House Limited (“ the SEOCH”) and HKFE Clearing Corporation Limited (“HKFEC”) to the list of public bodies (new Schedule 1) under the Prevention of Bribery Ordinance (Cap. 201) (“POBO”);
- (b) amend the definition of “public servant” in section 2(1) of the POBO so that any employee of the public body in new Schedule 2, an office holder of that public body (other than an honorary office holder) or any member of council, board, committee of that body 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; and
- (c) make some technical amendments.

LegCo Brief Reference

- 2. CSO/ADM CR 3/1806/98(99) Pt. 3 issued by the Chief Secretary for Administration’s Office on 18 March 1999.

Date of First Reading

- 3. 31 March 1999.

Comments

4. The Administration proposes to add the SEHK, HKFE, HKSCC, the SEOCH and HKFECC to the list of public bodies in the POBO. The legal consequence of which is that certain provisions of the POBO will be applicable to transactions between those bodies and members of the public, for example, bribery for procuring withdrawal of tenders for any contract with a public body for the performance of any work (section 6), bribery in relation to auctions conducted by or on behalf of any public bodies (section 7) or bribery of public servants by persons having dealings with public bodies (section 8).

5. At present, all employees and members (other than a club, association or educational institution) of a public body are “public servants” under the POBO. In the case of a club or association which is a public body, only members who are office holders 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, officers of the institution and members of the council, board, committee of the institution vested with responsibilities for the conduct or management of the institution’s affairs are classified as “public servants”. The legal effect of which is that certain provisions of the POBO will be applicable to transactions between public servants of those bodies and members of the public, for example, offering or acceptance of bribery to or by a public servant (section 4). The Administration considers it appropriate to define employees and persons vested with responsibility for the conduct or management of the affairs of the SEHK, HKFE, HKSCC, the SEOCH and HKFECC as public servants so as to put them under more stringent control. Members may refer to the Annex for a list of persons and office holders of the SEHK, HKFE, HKSCC, the SEOCH and HKFECC who are classified as public servants. The list is prepared by the Administration in response to Legal Service Division’s enquiry.

6. The Administration proposes to make the following technical amendments to the existing Schedule to POBO:

- (a) Item 1 “Cable and Wireless (Hong Kong) Limited” is repealed and substituted by “Hong Kong Telecom International Limited” to reflect its change in name.
- (b) Item 3 China Motor Bus Company Limited“ (CMB) is repealed as the CMB ceased to be a bus franchise with effect from 1 September 1998.
- (c) Item 4 “Chinese University of Hong Kong” is repealed and substituted by “The Chinese University of Hong Kong” to reflect the correct name of the institution.

- (d) Item 30 the word “Royal” in “Royal Hong Jockey Club” is repealed to reflect its change in name.
- (e) 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).
- (f) 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).
- (g) Item 84 “Long Win Holdings Limited” is repealed and substituted by “Long Win Bus Company Limited” to reflect its change in name.

Public Consultation

7. The 2 Exchanges and the 3 clearing houses have agreed to their employees and members of their Council, Board or Committees which are vested with management responsibilities (as listed in the Annex) being made public servants, provided that their ordinary broker members or participants not involved in the management of the organizations will not be made public servants.

Consultation with the LegCo Panel

8. The Security Panel of the Legislative Council has also been consulted on the proposals in the Bill at its meeting held on 11 February 1999 and its members have no special comments on them.

Conclusion

9. The legal and drafting aspects of the Bill are in order. Subject to Members’ view on policy, the Bill is ready for resumption of Second Reading debate.

Encl

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13 April 1999

Bill/LS/B/63/98-99

**The Administration's Response to the Points raised by the
Legislative Council Secretariat on the
Prevention of Bribery (Amendment) Bill 1999**

New definition of "public servant"

Under the new definition of "public servant" provided for in the captioned Bill, all employees of The Stock Exchange Hong Kong Limited (SEHK), the Hong Kong Futures Exchange Limited (HKFE), the Hong Kong Securities Clearing Company Limited (HKSCC), The SEHK Options Clearing House Limited (SEOCH) and the Hong Kong Futures Exchange Clearing Corporation Limited (HKFECC) plus persons on the Council/Board/Committees of these bodies which are vested with management responsibilities are "public servants". It is our understanding that the office holders/persons listed in the attached table will come under the new definition of "public servant".

Public Consultation

The two Exchanges and the three clearing houses have agreed to their employees and members of their Council/Board/Committees which are vested with management responsibilities (as listed in table attached) being made public servants, provided that their ordinary broker members or participants not involved in the management of the organizations will not be made public servants. The Bill has been drafted to this effect.

**List of Office holders/Persons in the SEHK, HKFE, HKSCC, SEOCH and HKFECC
who will come under the new definition of “public servant”
provided for in the Prevention of Bribery (Amendment) Bill 1999**

	SEHK	SEOCH	HKFE	
Employees	468 ⁽¹⁾		325 (plus 40 contract staff) ⁽¹⁾	
Members of Governing Bodies⁽²⁾	Council : 31	Board of Directors : 10	Board of Directors : 12	B
Members of Committees^{(3),(4),(5)}	Executive : 6 Finance : 9 Audit : 6 * Compensation : 6 Compliance : 8 Disciplinary : 6 Disciplinary Appeals : 9 Information Services : 7 * Listing : 13 Listing Appeals : 3 * Listing Nominating : 6 Membership : 8 Traded Options : 9 Trading & Settlement : 11 * Nominating : 6	* Adjustment : 6	Executive : 6 Finance : 5 Membership & Rules : 4 China Affairs (Advisory) : 4 Disciplinary : 3 * Nominating : 4	

- Note:**
- (1) Some of the employees serve both bodies.
 - (2) Membership of all the governing bodies includes persons who are not members of the body in question.
 - (3) All committee members are Council or Board members except those committees with an asterisk (*), in which case there are members who are not members of the respective Council/Board.
 - (4) A person may be a member of more than one Committee.
 - (5) Members of these Committees may include persons who are not members of the body in question.