

For discussion  
on 11 February 1999

## **LegCo Panel on Security**

### **Proposed Amendments to the Prevention of Bribery Ordinance (Cap. 201)**

#### **Introduction**

This paper sets out our proposal to amend the Prevention of Bribery Ordinance (POBO) (Cap. 201) to make The Stock Exchange of Hong Kong Limited (SEHK), the Hong Kong Futures Exchange Limited (HKFE) and their clearing houses public bodies under the POBO.

#### **Background**

##### **The Stock Exchange, the Futures Exchange and their clearing houses**

2. 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 31-member Council. It 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.

3. 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 Sang Index and Hang Sang 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.

4. 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, the 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) **HKFE 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.

5. 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.

### **To specify the two Exchanges and the three Clearing Houses as Public Bodies under the POBO**

6. At present, employees and members of public bodies under the POBO are “public servants” and the POBO provides for more stringent control over them than employees and members of other organisations. 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 organizations listed in the schedule to the POBO are also specified as “public bodies”. A copy of the Schedule is at Annex A.

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

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- (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.

8. 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’s interest to specify them as public bodies under the POBO so that those persons who are vested with responsibility for the control and management of these bodies could be made “public servants” under the POBO and be put under more stringent control. In this regard, we need to address two issues :

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

9. 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 B. 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.

10. 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 are vested with management responsibilities, are “public servants”. The definition should ensure that the ordinary broker members of the Exchanges and 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**

11. 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.

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

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

### **Timetable**

14. It is intended that legislative amendments will be introduced in the current 1998/99 Legislative Council session.

Administration Wing  
Chief Secretary for Administration's Office  
February 1999

**Letterhead BLIS ON INTERNET**  
**Section of Enactment**

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	L.N. 16 of 1999
Schedule:	1	Heading:	<b>PUBLIC BODIES</b>	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. (Amended 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 s. 65)
53. The Open University of Hong Kong. (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. (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(2))
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)

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Note 1-S. 18 of 48 of 1996 reads as follows-

"18. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 17 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance."

Note 2-For text of s. 14A prior to its repeal by s. 17 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

Note 3-For text of s. 14C prior to its amendment by s. 7 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

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**Section of Enactment**

Chapter: 201 Title: PREVENTION OF Bribery Ordinance Gazette Number:  
 Section: 2 Heading: Interpretation Version Date: 30/06/1997

- (1) In this Ordinance, unless the context otherwise requires- "advantage" (利益) means-
- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  - (b) any office, employment or contract;
  - (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
  - (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
  - (e) the exercise or forbearance from the exercise of any right or any power or duty; and
  - (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e), but does not mean any donation within the meaning of Part V of the Corrupt and Illegal Practices Ordinance (Cap 288) particulars of which are contained in any return of donations submitted or corrected by a candidate under section 29(2A) or (7A) respectively of that Ordinance;
- (Amended 33 of 1991 s. 2) "agent" (代理人) includes a public servant and any person employed by or acting for another; "banker's books" (銀行簿冊) means-
- (a) any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever;
  - (b) any cheque, voucher, record card, report, letter or other document whatsoever; and
  - (c) any copy of anything referred to in paragraph (a) or (b), used in the ordinary business of a bank; (Replaced 28 of 1980 s. 2) "child" (子女) includes a child who is illegitimate or adopted, a foster child and a step-child; "Commissioner" (專員) means the person appointed by the Governor to be in charge of the Independent Commission Against Corruption and includes the Deputy Commissioner; (Added 9 of 1974 s. 2) "company books" (公司簿冊) means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company; (Amended 28 of 1980 s. 2) "court" (法庭) includes a magistrate hearing proceedings with a view to committal for trial under section 85 of the Magistrates Ordinance (Cap 227); "Crown servant" (官方僱員) means a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government; "document" (文件) includes any register, book, record, tape-recording, any form of computer input or output, and any other material (whether produced mechanically, electrically, or manually or by any other means whatsoever); (Added 28 of 1980 s. 2) "entertainment" (款待) means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions; "investigating officer" (調查人員) means any person authorized by the Commissioner to exercise the powers of an investigating officer under this Ordinance; (Added 9 of 1974 s. 2)

"parents"(父母) includes parents-in-law and step-parents; "principal" (主事人) includes-

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

"public body" (公共機構) means-

- (a) the Government;
- (b) the Executive Council;
- (c) the Legislative Council;
- (d) the Urban Council;
- (da) any District Board; (Added 42 of 1981 s. 27)
- (db) the Regional Council; (Added 39 of 1985 s. 60)
- (e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council; and
- (f) any board, commission, committee or other body specified in the Schedule;

"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)

"spouse" (配偶) includes a concubine.

(2) For the purposes of this Ordinance-

(a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;

(b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and

(c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

(3) The Governor may by notice in the Gazette-

(a) exclude, for the purposes of the definition of "public servant" in subsection (1), any council, board, committee or other body of any educational institution specified in the notice;

(b) exclude from the definition of "public servant" any member of any council, board, committee or other body of any educational institution, who would otherwise by virtue of his membership thereof fall within that definition. (Added 50 of 1987 s. 2)

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