

LEGISLATIVE COUNCIL BRIEF

**Prevention of Bribery Ordinance
(Chapter 201)**

**PREVENTION OF BRIBERY ORDINANCE
(AMENDMENT OF SCHEDULE) ORDER 1999**

INTRODUCTION

At the meeting of the Executive Council on 12 January 1999, the Council ADVISED and the Chief Executive ORDERED that the Prevention of Bribery Ordinance (Amendment of Schedule) Order 1999 should be made.

BACKGROUND AND ARGUMENT

Exchange Fund Investment Limited

2. The Exchange Fund Investment Limited (EFIL) was incorporated in October 1998 to manage the equity portfolio acquired by the Exchange Fund during the Government's market operations in August 1998. The company acts as a fund manager of the Exchange Fund and manages the equity portfolio in accordance with the guidelines issued by the Hong Kong Monetary Authority on the advice of the Exchange Fund Advisory Committee.

The Schedule

3. Under the PBO, the control in relation to public bodies is more stringent than that relating to private organisations. After the EFIL has been specified as a public body for the purposes of the PBO, its members and employees will become public servants for the purposes of the PBO and will be subject to the stringent control in relation to public bodies. For example, it is an offence for a public servant to solicit or accept any advantage relating to his work in the public body concerned. Furthermore, there are provisions in the PBO specifically focusing on persons having dealings with public bodies. For example, it is an offence for anyone to offer an advantage to a public servant as an inducement for performing or abstaining from performing any act in his capacity as a public servant or for procuring of any contract with a public body for the performance of any work.

4. The Corruption Prevention Department of the Independent Commission Against Corruption (ICAC) gives special attention to the public bodies included in the Schedule and meets with them regularly for necessary corruption prevention work. The ICAC reviews the Schedule from time to time to see if there are other organisations which should be included as public bodies. The general criteria for inclusion are that the organisation is -

- (a) in receipt of or disbursing substantial public funds;
- (b) given a monopoly of a public service; or
- (c) placed in a position of special trust by Government.

5. We are satisfied that the EFIL meets the general criteria for inclusion as a public body for the following reasons -

- (a) the EFIL is managing the portfolio of securities purchased with monies from the Exchange Fund under a Letter of Appointment from the Hong Kong Monetary Authority on behalf of the Financial Secretary as Controller of that Fund¹ ; and
- (b) the EFIL is established and wholly-owned by the Government using the Exchange Fund's resources and its fees will be paid from the same source.

THE ORDER

6. Under section 35 of the PBO, the Chief Executive in Council may by order published in the Gazette amend the Schedule. The Order will amend the Schedule by adding "Exchange Fund Investment Limited" as a public body.

PUBLIC CONSULTATION

7. We have consulted the Board of Directors of the EFIL on the proposed designation and it welcomes the proposal.

¹ After the merger of the Land Fund portfolio into the Exchange Fund, the EFIL will also manage the securities originally held by the Land Fund.

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the proposed Order has no human rights implications.

BINDING EFFECT OF THE LEGISLATION

9. The amendment to the Schedule does not affect the current binding effect of the existing provisions of the Prevention of Bribery Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

10. There are no financial or staffing implications.

LEGISLATIVE TIMETABLE

11. The Order, being subsidiary legislation, will come into operation when it is published in the Gazette on 22 January 1999. The Order will then be tabled at the Legislative Council for negative vetting.

PUBLICITY

12. A press release will be issued when the Order is published in the Gazette on 22 January 1999.

ENQUIRIES

13. Enquiries on this brief may be directed to Mr Edward Mak, Assistant Secretary for Financial Services at 2527 3974.

Financial Services Bureau
22 January 1999