

For Information
on 15 November 1999

Legislative Council Panel on Constitutional Affairs

Application of Certain Provisions of the Prevention of Bribery Ordinance (Cap. 201) to the Chief Executive

Purpose

This paper is the Administration's response to some of the points raised by Members at the LegCo Constitutional Affairs Panel Meeting held on 25 October 1999 regarding the application of certain provisions of the Prevention of Bribery Ordinance (POBO) to the Chief Executive (CE).

Application of the POBO to the CE

2. As the Administration confirmed at LegCo Constitutional Affairs Panel Meeting held on 25 October 1999, the CE has indicated that he is happy to be bound by the POBO, and he has instructed the Administration to work out how that could be given effect.

3. The Administration is now working out options that can extend the provisions in the POBO which currently apply to government officers and public servants to similarly apply to the CE as far as possible while respecting the constitutional position of the CE under the Basic Law. The Administration will work out the proposals and revert to the LegCo Panel on Constitutional Affairs as soon as practicable.

Similar Exemptions of the CE from the Application of Other Ordinances

4. As pointed out by the Administration in Panel Paper CB(2)168/9899(03), the constitutional position of the CE with regard to the POBO is that the CE is not an agent of the SARG within the meaning of "agent" in section 2(1) of the POBO nor is the CE a government officer or a public servant under the POBO. Similar exemptions of the CE will only occur in such other Ordinances which only apply to "government officer" or "public servant"

with meaning as defined in the POBO. The Administration has attempted to search through the over 600 statutes of Hong Kong and the result is that the number of such exemptions are very small and most of them are actually not of relevance to the CE. A list of such provisions identified is attached at the Annex for Members' reference.

Administration Wing,
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November 1999

Exemptions of the Chief Executive from the application of Ordinances other than the Prevention of Bribery Ordinance (Cap. 201) because the relevant Ordinances only apply to “public servant” or “government officer”

Ordinance	Section	Description
Bankruptcy Rules (Cap.6 sub. leg. A)	Rule 23(6)	Concerned with payment to the Official Receiver if the shorthand writer appointed is a public servant.
Law Amendment and Reform (Consolidation) Ordinance (Cap.23)	s.27	CE in Council may redirect any sum payable to any public servant, or to the widow or child of any public servant, if the person to whom the sum is payable is certified to be unable to manage his affairs by reason of mental disability.
Companies Ordinance (Cap.32)	s.360L	Concerned with payment to the Government in the event of the accounts being audited by a public servant.
Companies (Winding-up) Rules (Cap.32 sub. leg. H)	Rule 60(6)	Concerned with payment to the Official Receiver if the shorthand writer appointed is a public servant.
Legal Officers Ordinance (Cap.87)	s.3 & 4	Provides that any legal officer shall in respect of any of the matter which relates to the official acts or omissions of any public servant, have all the rights of barristers and solicitors under the Legal Practitioners Ordinance (Cap.159).
Legal Aid Ordinance (Cap.91)	s.29(5)	Provides that FS may direct an annual administration fee to be payable in respect of the services afforded by public servants under the Supplementary Legal Aid Scheme shall be charged to the Fund and paid into general revenue.
Public Service Commission Ordinance (Cap.93)	s.6(1)(e)	Concerned with consultation with the Commission relating to matter affecting the conduct and discipline of public officers.
	s.14(1)(d)	Concerned with the conduct of examinations and the interviewing of public servants or candidates for the public service.
Public Service Commission Regulations (Cap.93 sub. leg. A)	Reg.8	Concerned with the conduct of examinations and the interviewing of public servants or candidates for the public service.
Public Health and Municipal Services (Cap.132)	s.138	Provides that a public officer shall not be personally liable if he act in the honest belief that his duty under the Ordinance required or entitled him to do it.

Ordinance	Section	Description
Essential Services Corps (General) Regulations (Cap.197 sub. leg. A)	Reg. 5(5)	The Commissioner may exempt a public servant from medical examinations.
Independent Commission Against Corruption (Cap.204)	s.10	S.10(1) provides, inter alia, that an officer authorized by the Commissioner may without warrant arrest a person if he reasonably suspects that such person, being a government officer, is guilty of an offence of blackmail committed by or through the misuse of office.
	s.12	<p>s.12(b)(iv) provides that it is the duty of the Commissioner, on behalf of CE, to investigate any alleged or suspected offence of blackmail committed by a government officer by or through the misuse of his office.</p> <p>s.12(b)(vii) provides that it is the duty of the Commissioner, on behalf of CE, to investigate any alleged or suspected conspiracy (by two or more persons including a government officer) to commit an offence of blackmail by or through the misuse of the office of that government officer.</p> <p>s.12(c) provides that it is the duty of the Commissioner, on behalf of CE, to investigate any conduct of a government officer which is connected with or conducive to corrupt practices and to report to the CE.</p>
	s.13	<p>s.13(1)(b) provides that the Commissioner may require any government officer to answer questions concerning the duties of any government officer or public servant and require the production of certain documents.</p> <p>s.13(2)(a) provides that the Commissioner or any authorized officers shall have access to documents relating to the work of any Government department in the possession or under the control of any government officer.</p>
Country Parks and Special Areas Regulations (Cap.208 sub. leg. A)	Reg.19	Reg. 19 provides that the Regulations do not apply to vehicles and bicycles used by public servant acting in the course of his duties.
Magistrates Ordinance (Cap.227)	s.12	S for J may authorize a public servant to lay before a magistrate or an officer of a magistrate's court an information in respect of an offence.

Ordinance	Section	Description
Police (Discipline) Regulations (Cap.232 sub. leg. A)	Reg.16(5)	Reg. 16(5) is concerned with the appointment of public servants to a disciplinary board.
Mines Safety Regulations (Cap.285 sub. leg. B)	Reg. 101	The regulation provides that public servant shall not give information or copies of certain plans of mines to unauthorized person.
Official Secrets Ordinance (Cap.521)	s.14 to 16	A person who is or has been a public servant commits an offence if without lawful authority he makes a damaging disclosure of security, intelligence, defence information or information related to international relations.
	s.17	A person who is or has been a public servant commits an offence if without lawful authority he discloses any information related to commission of offences and criminal investigations.
Legislative Council Ordinance (Cap.542)	s.15(1)(e)	Together with BL79(4), provides that a LegCo Member's office become vacant when he accepts a government appointment and becomes a public servant.
Emergency Relief Fund Ordinance (Cap.1103)	s.5(2)	Provides that the Emergency Relief Fund Committee shall consist of 2 or more members not being public servants appointed by the CE.