

For discussion on
9 February 1999

Legislative Council Panel on Constitutional Affairs
Application of Certain Provisions of the
Prevention of Bribery Ordinance to the Chief Executive

Purpose

This paper is an elaboration of the reply given by the Administration to a written question raised by the Hon. Emily Lau at the LegCo meeting on 13 January 1999 concerning the application of certain provisions of Prevention of Bribery Ordinance (Cap. 201) (the Ordinance) to the Chief Executive (CE).

Background

2. The Hon. Emily Lau raised a written question for reply at the LegCo meeting held on 13 January 1999 on whether the CE is subject to the provisions of the Ordinance; and if not, whether the Executive Authorities have examined if the CE should be brought under the ambit of the Ordinance. A copy of the question and reply is at Annex A.

3. Subsequent to the reply, Ms Lau requested the Administration to elaborate on its reply by providing a detailed paper for discussion at the Constitutional Affairs Panel Meeting to be held on 9 February 1999.

Application of the Ordinance to the CE

4. As set out in our reply to Ms Lau, the CE is neither a "government officer" nor a "public servant" under the Ordinance and is, therefore, not subject to those sections of the Ordinance that only apply to "government officers" or "public servants". Those provisions in question are sections 3, 4(2), 4(3), 5(2), 10, 12, 12AA and 16 of the Ordinance. An extract of those sections of the Ordinance is at Annex B for Members' reference.

5. Of the remaining provisions of the Ordinance, those which relate to criminal offences and to which the CE is subject in common with all other citizens of Hong Kong are sections 4(1), 5(1), 6, 7, 8, 9, 11, 12(1), 12A, 13, 13C, 14, 14C, 17, 17A, 17C, 29, 30, 33 and 33A; an extract of those sections is at Annex C.

6. As pointed out in the Administration's reply to Ms Lau's LegCo question, the CE is subject to the relevant provisions of the Ordinance like all other citizens of Hong Kong. There is therefore no question that the CE being "above the law".

7. Members may also wish to note that as stated in the Administration's earlier reply, Article 47 of the Basic Law provides that "The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties." Furthermore, Article 73(9) of the Basic Law provides for a mechanism under which LegCo may pass a motion of impeachment and report it to the Central People's Government for decision if the CE is charged with serious breach of law or dereliction of duty and the CE refuses to resign, and if the charge is substantiated by an independent investigation committee chaired by the Chief Justice of the Court of Final Appeal.

8. While the Administration do not see any immediate need to amend the Ordinance, we appreciate Members' concern regarding the application of certain provisions to the CE. We are therefore prepared to review the Ordinance taking into account Members' views.

9. The Administration will work out the scope of the review in due course. Given that corruption-related matters fall within the purview of the LegCo Security Panel, the Administration will keep the Security Panel informed of the progress of the review.

Administration Wing
Chief Secretary for Administration's Office
February 1999

LegCo Question 20 (Written Reply)

Asked by: The Hon Emily LAU Wai-hing

Date of Sitting: 13.1.99
Replied by: CS

Question:

It is learnt that the Prevention of Bribery Ordinance (Cap 201) was not applicable to the then Governor of Hong Kong before Hong Kong's reunification with China. In this connection, will the Executive Authorities inform this Council whether the Chief Executive ("CE") is now subject to the provisions of the Ordinance; if not, whether they have studied if the CE should be brought under the ambit of the Ordinance; if the conclusion of the study is that the CE should not fall within the ambit of the Ordinance, of the justifications for that?

Reply:

Madam President,

Both the then Governor of Hong Kong before Hong Kong's reunification with China and the Chief Executive (CE) are subject to the relevant provisions of the Prevention of Bribery Ordinance (the Ordinance) like all other citizens of Hong Kong. The Chief Executive is not a Government employee nor is he employed by a public body. He is not a "government officer" or a "public servant" as defined under the Ordinance. Accordingly he is not subject to those sections of the Ordinance that only apply to "government officers" or "public servants".

Article 47 of the Basic Law provides that "The Chief Executive of

the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties." Furthermore, Article 73(9) of the Basic Law provides for a mechanism under which the Legislative Council may pass a motion of impeachment and report it to the Central People's Government for decision if the CE is charged with serious breach of law or dereliction of duty and he refuses to resign, and if the charge is substantiated by an independent investigation committee chaired by the Chief Justice of the Court of Final Appeal.

The Administration has no plan to change the current position.

Letterhead "BLIS ON (NTERNET) Section of Enactment."

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	3	Heading:	Soliciting or accepting an advantage	Version Date:	30/06/1997

PART II

OFFENCES

Any Crown servant who, without the general or special permission of the Governor, solicits or accepts any advantage shall be guilty of an offence.

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Section of Enactment

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number:
Section: 4 Heading: **Bribery** Version Date: 30/06/1997

~~(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (Amended 28 of 1980 s. 3)~~

~~(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,
shall be guilty of an offence.~~

~~(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (Amended 28 of 1980 s. 3)~~

~~(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,
shall be guilty of an offence.~~

~~(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3)~~

~~(4) For the purposes of subsection (3) permission shall be in writing and~~

~~(a) be given before the advantage is offered, solicited or accepted; or
(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance.
and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)~~

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Section of Enactment

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	5	Heading:	Bribery for giving assistance, etc. in regard to contracts	Version Date:	30/06/1997

~~(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-~~

~~(a) the promotion, execution, or procuring of-~~

~~(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or~~

~~(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body;~~

~~or
(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,~~

~~shall be guilty of an offence.~~

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution or procuring of, or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in, any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

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Section of Enactment

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number:
Section: 4 Heading: Bribery Version Date: 30/06/1997

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's- (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

~~(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (Amended 28 of 1980 s. 3)~~

- ~~(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;~~
- ~~(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or~~
- ~~(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.~~

~~(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3)~~

~~(4) For the purposes of subsection (3) permission shall be in writing and-~~

- ~~(a) be given before the advantage is offered, solicited or accepted; or~~
 - ~~(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,~~
- ~~and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)~~

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Section of Enactment

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Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number:
Section: 5 Heading: **Bribery for giving assistance, etc. in regard to contracts** Version Date: 30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-

(a) the promotion, execution, or procuring of-

(i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or

(ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid, shall be guilty of an offence.

~~(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-~~

~~(a) the promotion, execution or procuring of, or~~

~~(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in, any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.~~

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Chapter: 201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:
Section: 11	Heading:	Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.	Version Date: 30/06/1997

(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

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Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number: 25 of 1998 s. 2
Section: 12 Heading: **Penalty for offences** Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable-
(a) on conviction on indictment-

(i) for an offence under section 10, to a fine of \$1000000 and to imprisonment for 10 years;
(ii) for an offence under section 5 or 6, to a fine of \$500000 and to imprisonment for 10 years; and
(iii) for any other offence under this Part, to a fine of \$500000 and to imprisonment for 7 years; and
(Replaced 50 of 1987 s. 3)

(b) on summary conviction-

(i) for an offence under section 10, to a fine of \$500000 and to imprisonment for 3 years; and
(ii) for any other offence under this Part, to a fine of \$100000 and to imprisonment for 3 years, (Replaced 50 of 1987 s. 3)

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

(Amended 28 of 1980 s. 5)

~~(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$100000 and to imprisonment for 1 year, and shall be ordered to pay to the Crown in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify.
(Amended 9 of 1974 s. 4; 28 of 1980 s. 5)~~

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Crown-

(a) a sum not exceeding the amount of the pecuniary resources; or

(b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court. (Added 9 of 1974 s. 4)

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. (Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)

~~(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. (Added 61 of 1980 s. 2)~~

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(3) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents or other article to an investigating officer authorized under subsection (1), shall, notwithstanding the provisions of other Ordinance or rule of law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance (Cap 112), comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such investigating officer in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year. (Amended 9 of 1974 s. 5; 48 of 1996 s. 4; 25 of 1998 s. 2)

(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year.

substantial and unreasonable prohibition or restriction upon the reporting of those proceedings or the reporting of that prosecution and that, notwithstanding the matters referred to in subsection (6)(a), (b) and (c) and the views of the person in favour of whom the order was made, if any, it is in the public interest to remove the prohibition or to relax the restriction, the court or the judge shall direct that the order shall not apply to such information in respect of which that order was made as is specified in the direction.

(8) Any person who publishes or broadcasts information being the subject of an order under subsection (5), including an order in respect of which a direction is made under subsection (7), in contravention of that order commits an offence and is liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

(Added 48 of 1996 s. 5)

by him or on his behalf during such period as may be specified in the notice; (Amended 50 of 1987 s. 14)

(c) any other person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him and further stating, in respect of each such property, the date upon which and the person from whom it was acquired, if the Commissioner believes that such information may assist the investigation or proceedings; (Amended 50 of 1987 s. 6)

(d) any other person whom the Commissioner believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the investigating officer specified in such notice all information in his possession or to which he may reasonably have access (not being information readily available to the public) respecting such matters as are specified in the notice or, as the Commissioner sees fit, to appear before the investigating officer specified in such notice or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the investigating officer specified in such notice or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which, in the opinion of the investigating officer specified in such notice or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the investigating officer specified in such notice or such other person shall have authority to administer any oath or take any affirmation; (Amended 28 of 1980 s. 7)

(e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the investigating officer specified in such notice any document or a copy, certified by the person in charge, of any document which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public); (Amended 28 of 1980 s. 7)

(f) the manager of any bank to give to the investigating officer specified in such notice copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by subsection (1)(d) include the power to require information from, and to require the attendance for the purpose of answering questions of-

(a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and

(b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction, as to any of the following matters, that is to say-

(i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;

(ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and

(iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(4) Every person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of other Ordinance or rule of law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance (Cap 112), comply with the terms of that notice within such time as may be specified therein or within such further time as the Commissioner may, in his discretion, authorize, and any person on whom such a notice has been served, who, without reasonable excuse, neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year. (Amended 25 of 1998 s. 2)

(5) A person who wilfully makes any false statement in answer to a notice under subsection (1) shall be guilty of an offence and shall be liable to a fine of \$20000 and to imprisonment for 1 year. (Added 9 of 1974 s. 6)

(Amended 9 of 1974 s. 6)

operation for periods of 3 months at a time. (Replaced 48 of 1996 s. 7)

(5) Where-

(a) a restraining order is made with respect to a third party or a suspected person against whom a prosecution for an offence under this Ordinance has been instituted; or

(b) a restraining order is in force with respect to a third party or a suspected person against whom a prosecution for such an offence is instituted, the restraining order shall, except in the case of a prosecution against a third party, continue in force until the proceedings on such prosecution have been finally determined and, if an order is made against that person under section 12(3) or 12AA, until that order has been set aside, complied with or enforced, as the case may be. (Amended 50 of 1987 s. 8; 48 of 1996 s. 7)

(5A) Nothing in subsection (4) or (5) shall prevent the court from making a further restraining order in respect of the same property on application ex parte by or on behalf of the Commissioner. (Added 50 of 1987 s. 8)

(6) A suspected person or third party on whom a copy of a restraining order has been served in accordance with subsection (3) or (3B) of this section or section 14D(5) shall be guilty of an offence and shall be liable on conviction to a fine of \$50000 or to the value of the property disposed of or otherwise dealt with, whichever is greater, and to imprisonment for 1 year if, during the continuance in force of the order, he knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with directions of the court. (Amended 48 of 1996 s. 7)

(7) In this section and in sections 14D and 14E, "court" means the Court of First Instance. (Added 48 of 1996 s. 7. Amended 25 of 1998 s. 2)

(Added 9 of 1974 s. 7)

* Please see the saving provisions contained in s. 18 of 48 of 1996, which section is reproduced immediately after the Schedule.

Letterhead "BLIS ON (NTERNET) Section of Enactment."

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number: 25 of 1998 s. 2

Section: 17C Heading: **Further provisions relating to security, appearance, etc.** Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Where a person granted an application under section 17B fails to comply with the requirement of any condition imposed under that section- (Amended 48 of 1996 s. 13)

(a) he may be arrested and dealt with in the same manner that a person who fails to comply with a notice under section 17A(1) may be arrested and dealt with under section 17A(4) and (5); and

(b) any deposit made or recognizance entered into under section 17B may be forfeited by a magistrate on application by the Commissioner or under section 65 (which relates to the enforcement of recognizances) of the Magistrates Ordinance (Cap 227).

(2) Without prejudice to section 65 of the Magistrates Ordinance (Cap 227), where a magistrate declares or orders the forfeiture of a recognizance under this section, such declaration or order may, on the application of the Commissioner, be registered in the Court of First Instance, and thereupon the provisions of sections 110, 111, 112, 113 and 114 (which relate to the enforcement of recognizances) of the Criminal Procedure Ordinance (Cap 221) shall apply to and in relation to that recognizance. (Amended 25 of 1998 s. 2)

(3) (Repealed 44 of 1992 s. 4)

(Added 50 of 1987 s. 10)

Letterhead "BLIS ON (NTERNET) Section of Enactment."

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number:
Section: **29** Heading: **Offence of making a false report of the commission of offence, etc.** Version Date: 30/06/1997

Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Ordinance, knowingly-

- (a) makes or causes to be made a false report of the commission of an offence under this Ordinance to any investigating officer specified in an authorization given under section 13; or
- (b) misleads any investigating officer specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$20000 and to imprisonment for 1 year.

(Amended 9 of 1974 s. 12)

Letterhead "BLIS ON (NTERNET) Section of Enactment."

Chapter: 201	Title: PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	134 of 1997 s. 85
Section: 33	Heading: Effect of conviction of an offence under this Ordinance	Version Date:	03/10/1997

Any person convicted of an offence under Part II of this Ordinance shall, by reason of such conviction, be disqualified for a period of 5 years from the date of such conviction from-

- (a) being elected as a Member of the Legislative Council; or
- (b) being or being elected or appointed as a member of the Executive Council, the Urban Council, the Regional Council and any other public body, other than a public body specified in the Schedule.

(Replaced 134 of 1997 s. 85)

Letterhead "BLIS ON (NTERNET) Section of Enactment."

Chapter: 201 Title: PREVENTION OF BRIBERY ORDINANCE Gazette Number:

Section: 33A Heading: **Power of court to prohibit employment of convicted person** Version Date: 30/06/1997

- (1) Where a person has been convicted of an offence under Part II, a court may, on the application of the prosecution or on its own motion, where it considers it to be in the public interest so to do, order that the convicted person be prohibited from taking or continuing employment, whether temporary or permanent and whether paid or unpaid-
- (a) in the case where the convicted person was employed by a corporation or a public body at the time of or prior to his conviction, as a director or manager or in such other capacity concerned with, whether directly or indirectly, the management of that corporation or any public body or any corporation that is a subsidiary of that corporation or any public body within the meaning of section 2 of the Companies Ordinance (Cap 32); or
- (b) in the case where the convicted person was practising any profession or was otherwise self-employed at the time of or prior to his conviction, in the practice of his profession or in the business, or class of business, in which he was so employed, as the case may be;
- (c) in other cases, as a partner or as a manager of or in such other capacity concerned with, whether directly or indirectly, the management of such partnership, firm or person or such class of partnership, firm or person; and
- (d) for such period not exceeding 7 years, as the court may determine.
- (2) A person in respect of whom an order under subsection (1) has been made may at any time during the continuance in force of the order apply to the court for the order to be varied or cancelled.
- (3) On an application under subsection (2) the court shall consider all the circumstances including any changes in the applicant's circumstances since the making of the order and whether it would be in the public interest for the order to be varied or cancelled.
- (4) Not less than 7 days before the hearing of an application under subsection (2) the person applying shall give written notice to the Attorney General of his intentions and on any hearing of an application the Attorney General shall have the right to appear and be heard.
- (5) Any person in respect of whom an order under subsection (1) has been made who contravenes the order commits an offence and is liable to a fine of \$50000 and to imprisonment for 12 months.

(Added 28 of 1980 s. 16)