

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.

BLIS ON

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

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)~~

[Previous section of enactment](#)

[Next section of enactment](#)

[Switch language](#)

[Back to the List of Laws](#)

BLIS ON

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

Section of Enactment

▼

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.

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

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

Chapter: 201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:
Section: 10	Heading:	Possession of unexplained property	Version Date: 30/06/1997

- (1) Any person who, being or having been a Crown servant-
- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,
- shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.
- (2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. (Added 9 of 1974 s. 3. Amended 48 of 1996 s. 3)
- (3)-(4) (Repealed 56 of 1973 s. 2)
- (5) In this section, "official emoluments" (公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

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

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

Section: **12AA** Heading: **Confiscation of assets** Version Date: 30/06/1997

- (1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property-
 - (a) found at the trial to be in his control as provided in section 10; and
 - (b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.
- (2) Any application for an order under subsection (1) shall be made by the Attorney General within 28 days after the date of the conviction.
- (3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.
- (4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had-
 - (a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and
 - (b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.
- (5) Nothing in subsection (4) shall be construed as limiting the court's discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).
- (6) An order under subsection (1)-
 - (a) may be made subject to such conditions as the court thinks fit in all the circumstances of the case; and
 - (b) may be made in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence occurred before the date of commencement of the Prevention of Bribery (Amendment) Ordinance 1987 (50 of 1987).
- (7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.
- (8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Crown.

(Added 50 of 1987 s. 4)

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)~~

BLIS ON

[Previous section of enactment](#) [Next section of enactment](#) [Switch language](#) [Back to the List of Laws](#)

Section of Enactment

▼
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.~~

[Previous section of enactment](#) [Next section of enactment](#) [Switch language](#) [Back to the List of Laws](#)

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

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.

BLIS ON

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

Section of Enactment

▼
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)~~

[Previous section of enactment](#)[Next section of enactment](#)[Switch language](#)[Back to the List of Laws](#)

(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.

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

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

Section: 13C Heading: **Restriction on publication of information disclosed under section 13B** Version Date: 30/06/1997

- (1) This section applies-
 - (a) to information of the description mentioned in section 13B which has been furnished to the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in respect of the liability, responsibility or obligation of any person ("the person named") under the Inland Revenue Ordinance (Cap 112);
 - (b) where that information is disclosed to the Attorney General under section 13B;
 - (c) where the Attorney General decides that any of the information so disclosed is to be adduced in evidence by the prosecution for the purpose of any prosecution of an offence under this Ordinance, not being an offence alleged to have been committed by the person named;
 - (d) where a venue for and a date and time of hearing of those proceedings has been fixed; and
 - (e) where those proceedings may result in the information being publicly revealed.
- (2) As soon as practicable after having made a decision of the description mentioned in subsection (1)(c), and in any case not less than 14 days before the date referred to in subsection (1)(d), the Attorney General shall serve notice in writing of that fact on the person who furnished the information as mentioned in subsection (1)(a) and on the person named.
- (3) A notice under subsection (2) shall be accompanied by a statement in writing so as to adequately inform the person on whom it is served of-
 - (a) the details of such information disclosed to the Attorney General that is to be so adduced;
 - (b) the venue for, date and time of the hearing of those proceedings; and
 - (c) the substance of this section.
- (4) Within 14 days after the service on him of a notice under subsection (2), the person on whom it is served may on notice in writing to the Attorney General make an application in chambers to the court before whom the proceedings are to be heard for an order under subsection (5) and the Attorney General shall be given an opportunity to be heard on that application.
- (5) On application made to it under subsection (4), the court may by order give directions prohibiting or restricting the publication of any information so disclosed to the Attorney General which may lead to the identity of the person named being publicly revealed.
- (6) In the making of an order under subsection (5), the court shall in considering whether or not to make an order, have regard to the views of the Attorney General on the application, if any, and those of the applicant and shall consider whether the public interest in the publication of any information being the subject of the application, without prohibition or restriction, outweighs-
 - (a) the privacy and confidentiality of that information;
 - (b) any prejudice to the person named which might result from the publication of that information without prohibition or restriction; and
 - (c) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Inland Revenue Ordinance (Cap 112).
- (7) If in the course of any prosecution of an offence under this Ordinance after the making of an order under subsection (5) the court by whom the order was made is satisfied, after giving the person in favour of whom the order was made an opportunity to be heard, that the effect of that order is to impose a

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: 17 Heading: **Further powers of search** Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Any investigating officer may, for the purposes of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance, make an ex parte application to a court for the issue of a warrant under subsection (1A). (Replaced 48 of 1996 s. 10)

(1A) Where on an application under subsection (1) the court is satisfied that there is reasonable cause to believe that in any premises or place there is anything which is or contains evidence of an offence under this Ordinance, the court may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer, to enter such premises or place, by force if necessary, and search the same. (Added 48 of 1996 s. 10)

(1B) Notwithstanding subsections (1) and (1A), where the Commissioner is satisfied that there is reasonable cause to believe-

(a) that in any premises or place there may be anything which is or contains evidence of an offence under this Ordinance; and

(b) that the making of an ex parte application under subsection (1) would seriously impede an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance, the Commissioner may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer to enter such premises or place, by force if necessary, and search the same. (Added 48 of 1996 s. 10)

(2) Without prejudice to any other law relating to entry and search, the chambers of counsel or the office of a solicitor are not subject to entry and search under this section or any warrant issued under this section except in the course of investigating an offence under this Ordinance alleged or suspected to have been committed by that counsel or that solicitor, as the case may be, or by his clerk or any servant employed by him in such chambers or office.

(3) Any person who obstructs or resists the Commissioner or any investigating officer in the exercise of the powers of entry and search under this section 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. 9; 28 of 1980 s. 12; 48 of 1996 s. 10)

(4) In this section "court" (法庭) means a magistrate and the Court of First Instance. (Added 48 of 1996 s. 10. Amended 25 of 1998 s. 2)

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

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

Section: 17A Heading: Surrender of travel document Version Date: 30/06/1997

(1) A magistrate may, on the application ex parte of the Commissioner, by written notice require a person who is the subject of an investigation in respect of an offence reasonably suspected to have been committed by him under this Ordinance to surrender to the Commissioner any travel document in his possession. (Amended 50 of 1987 s. 9; 48 of 1996 s. 11)

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a magistrate.

(5) Where a person is taken before a magistrate under subsection (4), the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely kept-

(a) until the expiry of the period of 28 days from the date of his committal to prison as aforesaid; or

(b) until such person complies with the notice under subsection (1) and a magistrate, by order in that behalf, orders and directs the Commissioner of Correctional Services to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Correctional Services so to do), (Amended L.N. 30 of 1982) whichever occurs first.

(6) Subject to section 17B, a travel document which is surrendered to the Commissioner under this section may be detained for 6 months from the date on which it was surrendered and may be detained for a further 3 months if a magistrate, on application by the Commissioner, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such further detention: (Amended 50 of 1987 s. 9)

Provided that a magistrate shall not hear an application under this subsection unless reasonable notice of the application has been given by the Commissioner to the person who surrendered the document. (Added 50 of 1987 s. 9)

(6A) All proceedings before a magistrate under this section shall be conducted in chambers. (Added 15 of 1976 s. 5)

(6B) A notice under subsection (1) which has been served in accordance with subsection (2) and complied with shall not thereafter be revoked or withdrawn. (Added 50 of 1987 s. 9)

(7) In this section and in section 17B, "travel document" (旅行證件) means a passport or other document establishing the identity or nationality of a holder. (Amended 50 of 1987 s. 9)

(Added 56 of 1973 s. 3. Amended 9 of 1974 s. 10)

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:

Section: 30 Heading: **Offence to disclose identity, etc. of persons being investigated** Version Date: 30/06/1997

(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under Part II is taking place, without lawful authority or reasonable excuse, discloses to-

(a) the person who is the subject of the investigation (the "subject person") the fact that he is so subject or any details of such investigation; or

(b) the public, a section of the public or any particular person the identity of the subject person or the fact that the subject person is so subject or any details of such investigation, shall be guilty of an offence and shall be liable on conviction to a fine of \$20000 and to imprisonment for 1 year. (Replaced 48 of 1996 s. 15)

(1A) (Repealed 48 of 1996 s. 16)

(2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation-

(a) a warrant has been issued for the arrest of the subject person;

(b) the subject person has been arrested whether with or without warrant;

(c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice served on him under section 14(1)(a) or (b);

(d) a restraining order has been served on any person under section 14C(3);

(e) the residence of the subject person has been searched under a warrant issued under section 17; or

(f) the subject person has been required to surrender to the Commissioner any travel document in his possession by a notice served on him under section 17A. (Replaced 48 of 1996 s. 16)

(3) Without affecting the generality of the expression "reasonable excuse" in subsection (1) a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection if, but only to the extent that, the disclosure reveals-

(a) any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Commissioner, the Deputy Commissioner or any officer of the Commission; or

(b) a serious threat to public order or to the security of Hong Kong or to the health or safety of the public. (Replaced 48 of 1996 s. 16)

(Amended 9 of 1974 s. 13)

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)