

立法會
Legislative Council

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Date : 22 November 2007

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 5 December 2007

**Proposed resolution under
the Organized and Serious Crimes Ordinance**

Further to LC Paper No. CB(3) 691/06-07 issued on 12 June 2007, the Secretary for Security has given fresh notice to move a proposed resolution at the Council meeting of 5 December 2007 under the Organized and Serious Crimes Ordinance. The President has directed that “it be printed in the terms in which it was handed in” on the Agenda of the Council.

2. The proposed resolution is attached herewith for Members’ consideration. The draft speech, in both English and Chinese versions, which the Secretary for Security will deliver when moving the proposed resolution, is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

ORGANIZED AND SERIOUS CRIMES ORDINANCE

RESOLUTION

(Under section 31 of the Organized and Serious
Crimes Ordinance (Cap. 455))

RESOLVED that the Organized and Serious Crimes Ordinance
(Amendment of Schedule 2) Order 2007, made by the Chief
Executive in Council on 22 May 2007, be approved.

**ORGANIZED AND SERIOUS CRIMES ORDINANCE
(AMENDMENT OF SCHEDULE 2) ORDER 2007**

(Made by the Chief Executive in Council under section 31
of the Organized and Serious Crimes Ordinance
(Cap. 455) subject to the approval
of the Legislative Council)

1. Other specified offences

Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) is amended, in paragraph 9 –

- (a) by adding –
- | | |
|---------------|---|
| “section 4(2) | soliciting or accepting bribes in
the capacity of a public
servant” |
| after – | |
| “section 4(1) | bribery of public servant”; |
- (b) by adding –
- | | |
|---------------|---|
| “section 5(2) | soliciting or accepting bribes in
the capacity of a public
servant for giving assistance,
etc. in regard to contracts” |
| after – | |
| “section 5(1) | bribery for giving assistance, etc.
in regard to contracts”; |
- (c) by adding –
- | | |
|---------------|--|
| “section 6(2) | soliciting or accepting bribes for
withdrawal of tenders |
| section 9(1) | soliciting or accepting bribes in
the capacity of an agent” |
| after – | |

“section 6(1) bribery for procuring withdrawal of tenders”.

Clerk to the Executive Council

COUNCIL CHAMBER

22 May 2007

Explanatory Note

The Central People’s Government of the People’s Republic of China has ratified the United Nations Convention against Corruption (“the Convention”) and the Convention entered into force for the People’s Republic of China, including Hong Kong, on 12 February 2006. Under Article 31 of the Convention, parties to the Convention are required to adopt measures to, amongst others, freeze, seize and confiscate proceeds of corruption related crimes.

2. To better fulfil the requirements under Article 31 of the Convention, this Order amends Schedule 2 to the Organized and Serious Crimes Ordinance (Cap. 455) by adding to that Schedule the offences under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance (Cap. 201). Under the amendments, the proceeds or property derived from those offences may be subject to a restraint order, charging order or confiscation order made under the Organized and Serious Crimes Ordinance (Cap. 455).

(Translation)

**Organized and Serious Crimes Ordinance
(Amendment of Schedule 2) Order 2007**

**Draft Speech by the Secretary for Security on the Resolution
at the Legislative Council Meeting on 5 December 2007**

Madam President,

I move that the motion, as printed on the Agenda, that is, the resolution to make the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007, be passed by this Council.

2. The United Nations Convention Against Corruption has come into force for China and become applicable to the Hong Kong Special Administrative Region. Most of the requirements of the Convention can be fulfilled by existing legislation and administrative measures. However, new legislative measures are required to better fulfill requirements concerning confiscation of proceeds of crime under the Convention.

3. Pursuant to Article 31 of the Convention, States Parties are required, to the greatest possible extent under their domestic legal systems, to adopt measures for the identification, tracing, freezing, seizure and the eventual confiscation of proceeds derived from bribery. Under our domestic legal framework, provisions for the freezing, seizure and confiscation of proceeds of crimes are provided for under the Organized and Serious Crimes Ordinance. The Government can apply to the court to exercise such powers to deal with proceeds derived from offences listed in Schedule 2 to the Ordinance.

4. Offences on “*offering*” bribes as defined under sections 4(1), 5(1), 6(1) and 9(2) of the Prevention of Bribery Ordinance are already included in Schedule 2 to the Organized and Serious Crimes Ordinance, whilst those on “*soliciting or accepting*” bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance are not. Hence, the tool for the confiscation of proceeds under the Organized and Serious Crimes Ordinance is not available to the offences on “*soliciting or accepting*” bribes.

5. To better achieve the confiscation requirements under Article 31 of the Convention, the Chief Executive in Council has made the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007. Specifically, the Order adds the offences on “*soliciting or accepting*” bribes as defined under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance to Schedule 2 to the Organized and Serious Crimes Ordinance. By so doing, the Government will be able to apply to the court for orders to freeze, seize and confiscate proceeds or property derived from these corruption offences on “*soliciting or accepting*” bribes.

6. A Subcommittee was set up by the Legislative Council in June 2007 to study the Order. On behalf of the Administration, I would like to thank the Subcommittee Chairlady, Ms Margaret Ng and other members for their valuable views and support for the Order. In response to the Subcommittee’s request, the Administration wishes to re-affirm that the offences on “*soliciting or accepting*” bribes under sections 4(2), 5(2), 6(2) and 9(1) of the Prevention of Bribery Ordinance are the only corruption offences which need to be added to Schedule 2 of the Organized and Serious Crimes Ordinance for better achieving the confiscation requirements under the Convention.

7. I now invite Members to approve the making of the Organized and Serious Crimes Ordinance (Amendment of Schedule 2) Order 2007.

8. Thank you, Madam President.

- END -