

立法會
Legislative Council

LC Paper No. CB(1)2553/11-12
(These minutes have been seen
by the Administration)

Ref: CB1/SS/10/11

Subcommittee on Prevention of Bribery Ordinance
(Amendment of Schedules 1 and 2) Order 2012

Minutes of the third meeting held on
Wednesday, 25 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Dr Hon Samson TAM Wai-ho, JP
- Public Officers attending** : **Agenda item I**

Miss Joey LAM, JP
Deputy Government Chief Information Officer
(Policy and Customer Service)
Commerce and Economic Development Bureau
- Mr Johann WONG
Deputy Commissioner for Innovation and
Technology
Commerce and Economic Development Bureau

Mr Manuel NG
Government Counsel
Department of Justice

Attendance by invitation : Agenda item I

Mr MOK Wah-hoi
Assistant Director
Corruption Prevention Department
Independent Commission Against Corruption

Mr John STRICKLAND
Chairman
Hong Kong Internet Registration Corporation
Limited

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Macy NG
Senior Council Secretary (1)2

Action

I Meeting with the Administration and representatives of Independent Commission Against Corruption (ICAC) and Hong Kong Internet Registration Corporation Limited

- (LC Paper No. CB(1)1662/11-12(01) - Administration's response to issues raised by members
- LC Paper No. CB(1)1662/11-12(02) - ICAC's response to issue raised by members
- L.N.38 of 2012 - The Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012 (the Order)
- LC Paper No. CB(1)1452/11-12(01) - Marked-up copy of the Order prepared by the Legal

Service Division)

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Administration briefed members on its paper setting out the Administration's response to the issues raised by members at the last meeting on 13 April 2012.

Follow-up actions required of the Administration

Admin 3. The Administration and ICAC were requested to take the following actions –

- (a) to provide legal advice on whether a public servant was restricted to a natural person for the purpose of the Prevention of Bribery Ordinance (Cap.201) (POBO);
- (b) to follow up with the four organizations covered by the Order that, upon designation of them as public bodies, a probity clause should be included in their outsourcing contracts notifying their counter-parties that they were public bodies under POBO and requiring, by way of contract, their service contractors to observe stipulated probity guidelines; and
- (c) to advise whether any provisions of POBO dealt with a hypothetical situation that a member of the Hong Kong Internet Registration Corporation Limited (HKIRC) accepted advantages for election of Directors to the Board.

4. Assistant Legal Adviser 10 (ALA10) was also requested to provide a paper on whether a public servant was restricted to a natural person for the purpose of POBO.

(Post-meeting note: The paper provided by ALA 10 (LC Paper No. LS58/11-12) was issued to members on 11 May 2012.)

Clause-by-clause examination of the Order

5. The Subcommittee completed clause-by-clause examination of the Order and did not propose any amendment to the Order.

Action

6. Mr James TO indicated that he would further decide whether he would move an amendment to the Order to put HKIRC under Schedule 1 only, in the light of the above requested legal advice to be provided by the Administration/ALA10.

Legislative timetable

7. The Chairman advised that the scrutiny period of the Order had been extended to 9 May 2012 by resolution of the Council on 18 April 2012. The deadline for giving notice of amendments to the Order was 2 May 2012.

8. The Subcommittee completed the scrutiny of the Order, and agreed that the Chairman would report to the House Committee (HC) on the deliberations of the Subcommittee at the HC meeting on 27 April 2012.

9. The Subcommittee agreed that there was no need to schedule a further meeting.

II Any other business

10. There being no other business, the meeting ended at 9:25 am.

Council Business Division 1
Legislative Council Secretariat
7 September 2012

**Proceedings of the third meeting of
the Subcommittee on Prevention of Bribery Ordinance
(Amendment of Schedules 1 and 2) Order 2012
on Wednesday, 25 April 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration and representatives of Independent Commission Against Corruption (ICAC) and Hong Kong Internet Registration Corporation Limited (HKIRC)			
000341 – 000510	Chairman	- Opening remarks	
000511 – 001259	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 13 April 2012 (LC Papers Nos. CB(1)1662/11-12(01) and CB(1)1662/11-12(02))	
001300 – 002752	Chairman Mr James TO ICAC Administration HKIRC Assistant Legal Adviser 10 (ALA10)	<ul style="list-style-type: none"> - Discussion on measures to tackle a hypothetical situation that HKIRC's ordinary members accepted advantages for election of Directors - Administration's explanation that with the governance mechanism of HKIRC and the transparency of its operations, it would be unlikely for any individual Director to be able to exert undue influence on HKIRC's business - Request for the Administration to provide information on whether it was legally untenable to make companies public servants under the Prevention of Bribery Ordinance (Cap. 201) (POBO) 	Administration to provide information/response (paragraph 3 of minutes)
002753 – 003634	Chairman Mr LAU Kong-wah ICAC	<ul style="list-style-type: none"> - Mr LAU's views that: <ul style="list-style-type: none"> (a) the Administration should request bureaux and departments to review the need to designate existing organizations under their purview as public bodies; and (b) there was a need to include in the contract requirements that employees of service providers/contractors of public bodies would be subject to control under Section 9 of POBO - ICAC's advice that it would regularly liaise with public bodies and remind them to include probity requirement as one of the listing conditions or contract requirements to commit the service provider/contractor to ethical practice in the course of reviewing their outsourcing contracts 	Administration to provide information/response (paragraph 3 of minutes)

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Request for ICAC to work with public bodies with a view to ensuring that all employees of their service providers/contractors would observe Section 9 of the POBO in relation to the delivery of the outsourced duties 	
003635 – 004016	Chairman Mr James TO ICAC	<ul style="list-style-type: none"> - ICAC's explanation that even if relevant contracts had not included the probity requirement, the Code of Conduct of the service providers/contractors might have already prohibited their employees from offering, soliciting or accepting advantage in relation to the contracts and hence their employees would also be subject to control under Section 9 of the POBO 	
004017 – 005113	Chairman Mr James TO Administration	<ul style="list-style-type: none"> - Discussion on whether a public servant was restricted to a natural person for the purpose of POBO - Mr TO's indication that he would consider moving an amendment to the Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012 ("the Order") to put HKIRC under Schedule 1 only, in the light of the supplementary information to be provided by the Administration 	Administration to provide information/response (paragraph 3 of minutes)
005114 – 005357	Chairman Mr James TO Administration	<ul style="list-style-type: none"> - Legislative timetable - Request for ALA10 to also study whether it was legally untenable to make companies public servants under POBO 	ALA10
<i>Clause-by-clause examination of the Order</i>			
005358 – 005550	Chairman Administration ALA10	<p><u>Sections 1 – 4</u></p> <ul style="list-style-type: none"> - ALA10 confirmed that no difficulties had been identified on the drafting aspect of the Order 	
005551 – 005625	Chairman Administration	Legislative timetable	The Clerk to prepare a report for submission to the House Committee