

For information

Legislative Council Panel on Financial Affairs

Proposal to amend Schedules 1 and 2 to the Prevention of Bribery Ordinance (Cap. 201)

PURPOSE

This paper briefs members on the proposal to amend Schedules 1 and 2 to the Prevention of Bribery Ordinance (Cap. 201) (“the Ordinance”) to bring the Hong Kong Investment Corporation Limited (“HKIC”) and three financial infrastructure-related institutions (i.e. the Hong Kong FMI Services Limited (“HKFMI”), the OTC Clearing Hong Kong Limited (“OTC Clear”) and the CMU OmniClear Limited (“CMU OmniClear”)) under the regulation of the Ordinance.

PUBLIC BODY UNDER THE ORDINANCE

2. The Ordinance and its subsidiary legislation provide a legal framework for the prevention of bribery. Under section 2(1) of the Ordinance, public bodies are defined as “any board, commission, committee or other body specified in Schedule 1”. Section 35 of the Ordinance stipulates that the Chief Executive in Council may by order published in the Gazette amend the Schedules to the Ordinance.

3. Under sections 4 and 5 of the Ordinance, members and employees of a public body are prohibited from soliciting or accepting any advantage relating to their work in the public body concerned. Furthermore, persons doing business with a public body are subject to sections 4, 5, and 8 of the Ordinance, which make bribery and corrupt dealings in connection with public bodies and public servants under various circumstances an offence.

4. For a public body which is included in Schedule 1 and not in Schedule 2, and is not a club, association or an education institution, all its members and employees will become public servants for the purposes of the Ordinance and are subject to sections 4 and 5 of the Ordinance. However, for some public bodies of a commercial nature, some of their members (such as shareholders) do not have management responsibility for running the public body in question. Hence, for these public bodies, only their employees, office holders (other than honorary ones) and members vested with responsibility for the conduct of the affairs of the public body are subject to sections 4 and 5 of the Ordinance. These public bodies are set out in both Schedules 1 and 2 of the Ordinance.

5. Government bureaux and departments regularly review the need to designate any existing organisation under their purview as a public body under the Ordinance in the light of public interest considerations, taking into account whether the organisation concerned:

- (a) receives substantial public funds;
- (b) has a monopoly or partial monopoly of a public service; or
- (c) is placed in a position of special trust by the Government.

JUSTIFICATION

HKIC

6. In his 2022 Policy Address, the Chief Executive announced the establishment of the HKIC to further optimise the use of fiscal reserves for promoting the development of industries and the economy. The HKIC centrally manages the Hong Kong Growth Portfolio (“HKGP”), the Greater Bay Area Investment Fund (“GBAIF”), the Strategic Tech Fund (“STF”), and the Co-Investment Fund (“CIF”), pooling together the relevant resources with the Government playing a leading role in attracting and facilitating more enterprises to develop in Hong Kong. The HKGP, the GBAIF, the STF and the CIF are funded by the Future Fund, which is part of the fiscal reserve.

7. The operating costs of the HKIC are funded by the Government. In addition, the HKIC is entrusted by the Government to support the development of innovation and technology, as well as strategic industries in Hong Kong through investment, thereby enhancing Hong Kong’s long-term competitiveness and economic vitality; while seeking reasonable risk-adjusted return over the medium to long term. Therefore, the HKIC meets the relevant principles set out in paragraph 5 and should be included as a public body under Schedule 1 to the Ordinance.

HKFMI

8. The HKFMI was established in 2014 and is wholly owned by the Government. Its main purpose is to assist the Hong Kong Monetary Authority (HKMA) in the management and operation of certain financial market infrastructures and other infrastructures (related infrastructures) supervised by the HKMA, including the real-time gross settlement system, over-the-counter (“OTC”) derivatives trade repository, Commercial Data Interchange (CDI) and various central bank digital currency cross-border platforms (commonly known as mBridge).

9. The Exchange Fund provided funding for the initial set-up of the HKFMI and will provide additional funding to the HKFMI as appropriate. It also has a total or partial monopoly to assist the HKMA in the management and operation of the related infrastructures. Against the above background, the HKFMI meets the relevant principles set out in paragraph 5 and should be included as a public body under Schedule 1 to the Ordinance.

OTC Clear

10. Under the Securities and Futures Ordinance (Cap. 571) (“SFO”), market participants may satisfy their mandatory clearing obligations by clearing standardised OTC derivatives transactions through designated central counterparties (“CCPs”)¹. At present, the OTC Clear, a subsidiary of the Hong Kong Exchanges and Clearing Limited (“HKEX”), is one of the recognised clearing houses designated as a CCP for the purpose of mandatory clearing, and therefore has the exclusive right to provide the relevant public service and should be included as a public body under Schedule 1 to the Ordinance.

11. As HKEX is a listed company, not all of its members (such as shareholders) have management responsibilities over the OTC Clear. Therefore, in accordance with the arrangement in paragraph 4 above, the OTC Clear should be included in Schedule 2 to the Ordinance to exclude those members who do not have management responsibilities from the definition of a public officer in the Ordinance. The above proposed arrangement is in line with the existing arrangements for the other two exchanges² and three clearing houses³ under HKEX.

CMU OmniClear

12. The Central Moneymarkets Unit (CMU) is a central clearing and settlement system owned and operated by the HKMA to provide clearing, settlement and custody services for debt instruments denominated in Hong Kong dollars and other major currencies. The CMU has been designated as a clearing and settlement system by the HKMA under the Payment Systems and Stored Value Facilities Ordinance. In order to commercialise the development of CMU, the HKMA established the CMU OmniClear on 7 October 2024, which operates the CMU on behalf of the HKMA from 1 January 2025, and therefore has the monopoly to provide the relevant public services.

¹ As far as CCPs are concerned, both recognised clearing houses and automated trading service providers authorised under the SFO may be CCPs to provide OTC derivatives clearing services to persons in Hong Kong.

² Namely, the Stock Exchange of Hong Kong Limited and Hong Kong Futures Exchange Limited.

³ Namely, the Hong Kong Securities Clearing Company Limited, the HKFE Clearing Corporation Limited and the SEHK Options Clearing House Limited.

13. The CMU OmniClear was established with funding from the Exchange Fund and is a wholly-owned subsidiary of the Exchange Fund. During the initial period of its establishment, its daily operating costs were paid by the Government from the Exchange Fund. Against the above background, the CMU Omniclear should be designated as a public body under Schedule 1 to the Ordinance. For the purpose of Schedule 2, the CMU OmniClear has established a Market Advisory Group to obtain information and advice on the latest market developments. These advisors are not employees of the CMU OmniClear and will not be involved in or responsible for the management or operation of any of the CMU OmniClear's affairs. Therefore, in accordance with the arrangements in paragraph 4 above, the CMU OmniClear should be included in Schedule 2 to the Ordinance, and those members who do not have management responsibilities should be excluded from the definition of a public officer in the Ordinance.

CONSULTATION

14. We have consulted the HKIC, the HKFMI, the OTC Clear and the CMU OmniClear. They agreed with the proposal.

LEGISLATIVE PROPOSAL

15. We propose to amend Schedule 1 to the Ordinance to designate the HKIC, the HKFMI, the OTC Clear and the CMU OmniClear as public bodies for the purposes of the Ordinance; and amend Schedule 2 to the Ordinance to include the OTC Clear and the CMU OmniClear as public bodies specified for purposes of definition of public servant under the Ordinance.

LEGISLATIVE TIMETABLE

16. We plan to submit the proposed amendments to the Legislative Council for negative vetting in mid-2025.

ADVICE SOUGHT

17. Members are invited to note this paper.

Financial Services and the Treasury Bureau
March 2025