

LCQ19: Governance of statutory bodies

Following is a question by the Hon James To and a written reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (January 30):

Question:

Regarding the governance of statutory bodies, will the Government inform this Council of:

- (a) the respective statutory bodies -
 - (i) which are not monitored by The Ombudsman because The Ombudsman Ordinance (Cap. 397) is not applicable to them, and the reasons why the Ordinance does not apply to them;
 - (ii) which are not subject to the Prevention of Bribery Ordinance (Cap. 201) because the Ordinance is not applicable to them, and the reasons why the Ordinance does not apply to them;
 - (iii) which have or have not established audit committees, and the criteria for determining whether it is necessary to establish audit committees; or
 - (iv) with incumbent non-official members who have served in the same post in the bodies concerned for more than six years; and
- (b) the details of the cases in which the attendance rates of official representatives at the meetings of statutory bodies in the past three years were lower than 50% (including the names of the statutory bodies concerned, the post titles of the official representatives and their attendance rates)?

Reply:

Madam President,

My reply to the various parts of the questions is set out below:

(a)(i) Section 7(1)(a) of The Ombudsman Ordinance (Cap. 397) (TOO) provides that The Ombudsman may investigate any action taken by or on behalf of an organisation set out in Part I of Schedule 1 in the exercise of its administrative functions. Part I of Schedule 1 comprises 18 public/statutory bodies, in addition to government

departments/agencies. These bodies have been added to Part I of Schedule 1 mainly because they perform major functions which have been hitherto performed by the Government, such as Hospital Authority, or provided essential service to, and thus have a significant impact on the community, such as Airport Authority. In addition, section 7(1)(b) of TOO empowers The Ombudsman to investigate any action taken by or on behalf of an organisation set out in Part II of Schedule 1 in the exercise of its administrative functions in relation to the Code on Access to Information published by the Government. Part II lists five other organisations including the Hong Kong Police Force and the Independent Commission Against Corruption. If a statutory body is not found in either Part I or Part II of Schedule 1, it will not be subject to The Ombudsman's jurisdiction.

(a)(ii) Sections 4, 5, 6 and 7 of the Prevention of Bribery Ordinance (Cap. 201) (POBO) specifically deal with bribery acts involving a "public body", such as bribery for procuring contracts or withdrawal of tenders. The term "public body" is defined under section 2 of the POBO to mean -

- (a) the Government;
- (b) the Executive Council;
- (c) the Legislative Council;
- (d) any District Council;
- (e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Chief Executive or the Chief Executive in Council; and
- (f) any board, commission, committee or other body specified in Schedule 1 of the POBO, such as Hong Kong Housing Authority, Hospital Authority and Airport Authority.

Section 9 of the POBO generally deals with bribery acts involving an agent (i.e. any person employed by or acting for another) in private sector as well as public sector.

Where a statutory body falls within the definition of "public body", any bribery act involving the statutory body may be caught under sections 4, 5, 6, 7 and 9 of the POBO, depending on the relevant circumstances of the case. Otherwise, the bribery act may still be subject to section 9 of the POBO.

(a)(iii) In considering whether to establish a dedicated audit committee, statutory bodies will take into account various factors including their nature and functions,

scale of operation, the availability of other more effective means to perform the audit function, such as the engagement of an external auditor or tasking other committees of the statutory bodies to assume the audit function, etc. Based on the information provided by bureaux/departments, there are 24 statutory bodies which have established a dedicated audit committee to perform the audit function (a list is at Annex 1).

(a)(iv) As at January 1, 2008, there are 137 post-holders in 32 statutory bodies with Government appointed non-official members who have served in the same post of the bodies concerned for more than six years. Details are set out at Annex 2.

(b) Details of the cases in which the attendance rates of official representatives at the meetings of statutory bodies during the past three years were lower than 50 per cent are set out at Annex 3.

Ends/Wednesday, January 30, 2008