

LEGISLATIVE COUNCIL BRIEF

The Ombudsman Ordinance
(Chapter 397)

THE OMBUDSMAN (AMENDMENT) BILL 2001

INTRODUCTION

A At the meeting of the Executive Council on 15 May 2001, the Council ADVISED and the Chief Executive ORDERED that The Ombudsman (Amendment) Bill 2001, at Annex A, should be introduced into the Legislative Council to ensure the proper functioning and administration of the Office of The Ombudsman after its delinking from the Government and to extend the jurisdiction of The Ombudsman.

BACKGROUND AND ARGUMENT

General Background

2. The Ombudsman Ordinance (formerly known as the Commissioner for Administrative Complaints Ordinance) was enacted in 1988 to provide for the necessary legislative framework for the establishment of the public office of Commissioner for Administrative Complaints.

3. The Ombudsman Ordinance (“the Ordinance”) provides for the appointment, powers and functions of The Ombudsman to investigate administrative actions taken on behalf of the Government or public authorities. Apart from specific provisions regarding the power of The Ombudsman to appoint staff and for the Chief Executive to be the approving authority for the salary and the terms and conditions of service of the staff to be appointed, there are no other specific provisions concerning the administration of the Office of The Ombudsman (“the Office”).

Delinking from the Government

4. Although the Office has been delivering its functions independently, it has been closely linked with the Government and operates by and large like a Government department: 74 out of its existing 90 permanent posts are filled by general grade officers seconded from the civil service; its operating expenses are governed by the Government resource allocation and accounting systems; and it receives administrative support service from other departments.

5. Members of the Legislative Council (“LegCo”) have repeatedly expressed concern that the independence of the Office may be compromised by the secondment of civil servants who will be subject to redeployment back to the civil service. Moreover, the current staff secondment arrangement does not provide The Ombudsman with much flexibility in the choice or retention of staff and in adjusting the staffing arrangements quickly enough in response to changing or unexpected caseloads.

6. Against this background, The Ombudsman proposed that the Office should be “delinked” formally from the Government, and that separate administrative and financial management systems should be established. We consider it appropriate from the point of view of handling administrative complaints for steps to be taken to enhance the independent image of the Office and to provide the necessary flexibility and powers for The Ombudsman to ensure the efficient functioning and administration of the Office after the delinking. The Ombudsman will gradually replace the civil servants on secondment to the Office by contract staff.

7. To formalize the delinking exercise, new provisions are required under the Ordinance to establish The Ombudsman as a corporation sole capable of taking civil actions and empower The Ombudsman to acquire and hold property, and to enter into contracts and charge fees. To further clarify the independent status of The Ombudsman, amendments are proposed to make clear that The Ombudsman is not a servant or agent of the Government and that The Ombudsman, the staff and any person should be protected from personal civil liability in the performance of statutory functions to enable the Office to operate effectively. Nevertheless, The Ombudsman should be subject to the necessary requirements over accounting and auditing matters and continue to be subject to the independent examination by the Director of Audit. New provisions are also proposed to confirm the status of The Ombudsman as the controlling officer for the purposes of the Public Finance Ordinance and put The Ombudsman and the staff under the ambit of the Prevention of Bribery

Ordinance as applicable to other major statutory bodies.

Regularization of Certain Functions Performed by The Ombudsman

8. Taking the opportunity of the delinking exercise, we propose a number of other amendments to better reflect and regularize certain functions being performed by the Office. It has been the practice of The Ombudsman to dispose of complaints, which are minor and straightforward in nature, through alternative means such as preliminary inquiry and mediation. Therefore, new provisions are proposed to formalize these effective means of dispute resolution, especially for those straightforward cases not justifying a full investigation. Another new provision is proposed to put beyond doubt the power of The Ombudsman to appoint special advisers in such areas as legal, medical and engineering fields to assist in the better carrying out of the Office's duties. We also propose to remove any unnecessary constraint on The Ombudsman's power to publish an investigation report so long as the identity of the relevant parties is not disclosed.

9. The Ordinance provides for an obligation on public officers to provide information to The Ombudsman for the purpose of an investigation, despite any secrecy provision imposed by law. Legal advice is that the jurisdiction of The Ombudsman has over the years extended beyond Government bureaux and departments and that the staff of some statutory organizations covered under the Ordinance may not be regarded as public officers. It is therefore proposed to replace the reference to "public officers" by "an organization", being an organization to which the Ordinance applies, to safeguard the continued effective operation of The Ombudsman.

Addition of Two Statutory Bodies to the Jurisdiction of The Ombudsman

10. The Ombudsman's jurisdiction covers all Government bureaux and departments and 15 major statutory bodies. It is the Government's policy to keep under review the possibility of further expanding The Ombudsman's jurisdiction to other major statutory bodies. Recently, we have secured the agreement of the Equal Opportunities Commission ("the EOC") and the Privacy Commissioner for Personal Data ("the PCO") for them to be put under the jurisdiction of The Ombudsman. As a result, amendments are proposed to include the two organizations under the ambit of the Ordinance.

THE BILL

11. The major provisions of the Bill are set out in the following paragraphs.

12. Clause 3 amends section 3 of the Ordinance to provide that The Ombudsman shall be a corporation sole capable of suing and being sued so as to enable The Ombudsman as an independent authority to take civil action in respect of any loss the Office may have suffered and to provide a similar right to the public to commence civil proceedings against the Office in respect of its civil wrong. Clauses 2, 4 and 5 amend sections 2, 4 and 5 of the Ordinance to differentiate The Ombudsman as a corporation sole from the person who is appointed to be The Ombudsman.

13. In clause 6, the new section 6A enables The Ombudsman to appoint advisers and section 6B provides that The Ombudsman is not to be regarded as a servant or agent of the Government and that The Ombudsman and the staff shall be subject to the control of the Prevention of Bribery Ordinance as applicable to other major statutory bodies. The Ombudsman will continue to be designated as the controlling officer for the purposes of the Public Finance Ordinance.

14. Clause 8 empowers The Ombudsman to acquire, hold or dispose of property and to enter into, carry out, assign or accept the assignment of, vary or rescind contracts. Clause 9 allows The Ombudsman to charge reasonable fees for services the Office provides (for example, such charge may include charges paid for the provision of copies of taped telephone complaint or documents kept by the Office), subject to the approval of the Director of Administration regarding the nature of those services.

15. Clause 10 enables The Ombudsman to conduct preliminary inquiry for the purpose of determining whether to undertake an investigation under the Ordinance and to deal with complaints by way of mediation.

16. Clause 11 replaces the reference to “a public officer” by “an organization”, being an organization to which the Ordinance applies, in section 13(3)(a) to better reflect the ambit of The Ombudsman.

17. Clause 12 amends section 15(1) and (2) to require persons appointed under the new section 6A to maintain secrecy.

18. Clause 13 amends section 16A(2) to remove any unnecessary constraint on The Ombudsman's power to publish a report on an investigation conducted.

19. Clause 15 provides immunity from personal civil liability to The Ombudsman, the staff and any person in the carrying out of their duties under the Ordinance.

20. Clause 18 extends the jurisdiction of The Ombudsman by adding the EOC and the PCO to Part I of Schedule 1 to the Ordinance.

21. The new Schedule 1A created in clause 19 contains new provisions spelling out the resources of The Ombudsman, and the requirement to seek the approval of the Director of Administration in the investment of funds not immediately required to be expended. Furthermore, The Ombudsman shall prepare proper accounts, appoint an auditor, be subject to the examination of the Director of Audit, and be exempted from taxation under the Inland Revenue Ordinance. The Ombudsman shall also submit an annual report to the Chief Executive setting out the activities of the Office as well as the statement of accounts and the auditor's report, which shall be caused to be laid on the table of LegCo.

22. Clause 20 makes a transitional arrangement for the person currently holding office as The Ombudsman.

23. Clause 21 is a related amendment to the Prevention of Bribery Ordinance by including "The Ombudsman" in Schedule 1 to that Ordinance.

B 24. An extract of the relevant provisions of the Ordinance is at Annex B.

PUBLIC CONSULTATION

25. We have briefed the LegCo Panel on Administration of Justice and Legal Services on the proposal to delink the Office from the Government. The Panel supported the proposal.

BASIC LAW IMPLICATIONS

26. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

27. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

28. The delinking exercise will not affect the existing financial commitment (i.e. resources on recurrent expenditure) of the Government to fund the operation of the Office. However, there are one-off commissioning expenses, in a total amount of \$2.6 million, required by the Office to set up its commissioning team and accounting and human resources systems, conduct executive search and place advertisements for employing contract staff in 2001-02. The additional workload arising from the inclusion of the ECO and the PCO into the jurisdiction of the Office will be absorbed by the Office within its existing resources.

LEGISLATIVE TIMETABLE

29. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	18 May 2001
First Reading and commencement of Second Reading debate	30 May 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

2. A press release will be issued on 17 May 2001. A spokesman

will be made available to answer media enquiries.

ENQUIRIES

3. For enquiries on this brief, please contact Ms Maggie Wong, Assistant Director of Administration at 2810 3503.

Administration Wing
Chief Secretary for Administration's Office
17 May 2001

THE OMBUDSMAN (AMENDMENT) BILL 2001

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A BILL

To

Amend The Ombudsman Ordinance and to make a related amendment to the Prevention of Bribery Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as The Ombudsman (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

2. Interpretation

Section 2(1) of The Ombudsman Ordinance (Cap. 397) is amended in the definition of " Ombudsman " by repealing " appointed under section 3 " and substituting " referred to in section 3(2)(a) " .

3. Appointment and tenure of office

Section 3 is amended -

- (a) in subsection (1), by repealing " there shall be a public officer " and substituting " a person shall be appointed who is to be " ;
- (b) by repealing subsections (2) and (3) and substituting -

" (2) The Ombudsman -

- (a) is a corporation sole with perpetual succession;
- (b) may sue and be sued in that corporate name; and
- (c) shall have an official seal.

(3) The appointment under subsection (1) shall be made in writing under the hand of the Chief Executive and the person appointed shall, subject to subsection (4), hold office for a period of 5 years and shall be eligible for reappointment." ;

- (c) in subsections (5) and (6), by adding " the person appointed to be" before " the Ombudsman" ;
- (d) by adding -

" (7) The financial and report provisions set out in Schedule 1A shall have effect with respect to the Ombudsman." .

4. Ombudsman to hold no other office

Section 4 is amended by adding " person appointed to be the" after " The" .

5. Filling of temporary vacancy

Section 5 is amended -

- (a) in subsection (1) -

- (i) by adding " the person appointed to be" after " If" ;
 - (ii) by repealing " as the Ombudsman" and substituting " as he" ;
 - (iii) by repealing " a new Ombudsman is appointed" and substituting " another person is appointed to be the Ombudsman" ;
- (b) in subsection (2) -
- (i) by repealing " Section 4" and substituting " Sections 4 and 6B(3)" ;
 - (ii) by repealing " it applies to" and substituting " they apply to the person appointed to be" .

6. Sections added

The following are added in Part II -

"6A. Advisers

The Ombudsman may from time to time appoint such advisers as he considers necessary to assist him in the performance of his functions under this Ordinance.

6B. Ombudsman not to be regarded as servant or agent of Government

(1) Subject to subsections (2) and (3), the Ombudsman shall not be regarded as a servant or agent of the Government

or as enjoying any status, immunity or privilege of the Government.

(2) For the purposes of the Prevention of Bribery Ordinance (Cap. 201), the person appointed to be the Ombudsman shall be deemed to be a public servant within the meaning of section 2 of that Ordinance.

(3) For the purposes of the Public Finance Ordinance (Cap. 2), the person appointed to be the Ombudsman shall be deemed to be a public officer and shall be designated as the controlling officer in respect of the estimates of expenditure of the Ombudsman under section 12 of that Ordinance." .

7. Part heading amended

The heading to Part III is amended by adding " AND POWERS" after " FUNCTIONS" .

8. Section added

The following is added -

"7A. Powers of Ombudsman

The Ombudsman may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions, and in particular, but without prejudice to the generality of the foregoing, may -

- (a) acquire and hold property of any description if in the opinion of the Ombudsman such property is necessary for -
 - (i) the accommodation of the Ombudsman or any person appointed under section 6(1);
 - (ii) the performance of any of his functions,and, subject to the terms and conditions upon which such property is held, dispose of it;
- (b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation." .

9. Section added

The following is added in Part III -

"9A. Fees

- (1) The Ombudsman may charge any person such reasonable fee as he determines in respect of any service -
 - (a) approved by the Director of Administration; and
 - (b) provided by the Ombudsman to that person under this Ordinance, otherwise than in pursuance of an obligation imposed by this Ordinance.
- (2) The Ombudsman may recover any fee payable under subsection (1) as a civil debt due to him." .

10. Sections added

The following are added in Part IV -

"11A. Preliminary inquiries

For the purposes of determining whether to undertake an investigation, the Ombudsman may conduct such preliminary inquiries as he considers appropriate.

11B. Dealing with complaints by mediation

(1) The Ombudsman may, at any time, decide to deal with a complaint by mediation under this section.

(2) The mediator in any mediation under this section is to be -

(a) the Ombudsman; or

(b) a person authorized under subsection (3).

(3) For the purposes of subsection (2)(b), the Ombudsman may authorize any person appointed under section 6(1) as a mediator in any mediation.

(4) Participation in the mediation by the complainant and the organization affected is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) If an attempt to deal with a complaint by mediation under this section is unsuccessful -

- (a) the complaint is to be treated under this Part as if the mediation had not taken place; and
- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Evidence of anything said or admitted during the mediation and any document prepared for the purposes of such mediation -

- (a) shall not be admissible in evidence in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document related, consents to its admission;
- (b) shall not be admissible in evidence against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section." .

11. Evidence

Section 13(3)(a) is amended by repealing " a public officer" and substituting " an organization" .

12. Ombudsman and his staff to maintain secrecy

Section 15(1) and (2) is amended by adding " or 6A" after " section 6" .

13. Publication of reports

Section 16A(2) is amended -

- (a) by repealing " be prepared in such manner that" and substituting " disclose" ;
- (b) by repealing everything after " investigation" where it secondly appears and substituting a full stop.

14. Privilege

Section 18(a) is amended by repealing " , 17 or 22" and substituting " or 17 or section 3(4)(a) of Schedule 1A" .

15. Section added

The following is added -

"18A. Immunity

No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance." .

16. Annual report

Section 22 is repealed.

17. Power to amend Schedules

Section 24 is amended by repealing " Schedule 1" and substituting " Schedules 1 and 1A" .

18. Organizations to which this Ordinance applies

Part I of Schedule 1 is amended by adding -
" Equal Opportunities Commission.
Privacy Commissioner for Personal Data." .

19. Schedule 1A added

The following is added -

" SCHEDULE 1A [ss. 3(7), 18(a) & 24]
FINANCES, ETC. OF OMBUDSMAN

1. Resources of Ombudsman

The resources of the Ombudsman shall consist of -

- (a) all money appropriated by the Legislative Council under section 6(3) of this Ordinance;
- (b) all other money and property, including fees, interest and accumulations of income received by the Ombudsman.

2. Investment of surplus funds

(1) Subject to subsection (2), the Ombudsman may invest his funds that are not immediately required to be expended.

(2) The Ombudsman shall not invest funds pursuant to subsection (1) except in such form of investment as the Director of Administration, after consulting with the Secretary for the Treasury, approves.

3. Accounts, audit and annual report of Ombudsman

(1) The Ombudsman shall cause proper accounts to be kept of all his financial transactions.

(2) The Ombudsman shall, as soon as practicable after the end of a financial year, prepare a statement of the accounts of the Ombudsman, which statement shall include an income and expenditure account and a balance sheet.

(3) The Ombudsman shall appoint an auditor who shall, as soon as practicable after the end of a financial year, audit the accounts required under subsection (1) and the statement of accounts required under subsection (2) and shall submit a report on the statement to the Ombudsman.

(4) The Ombudsman shall, as soon as practicable and in any case within 6 months after the end of a financial year, furnish -

- (a) a report on his activities including a general survey of developments, during that year, in respect of matters falling within the scope of his functions;
- (b) a copy of the statement of accounts required under subsection (2); and

- (c) the auditor' s report on the statement, to the Chief Executive who shall cause them to be tabled in the Legislative Council.

4. Director of Audit's examination

(1) The Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the Ombudsman has expended his resources in performing his functions and exercising his powers.

(2) Subject to subsection (3), the Director of Audit shall have a right of access at all reasonable times to all such documents as he may reasonably require for conducting an examination under this section and shall be entitled to require from any person holding or being accountable for any such document such information and explanation as he considers reasonably necessary for that purpose.

(3) Subsection (2) applies only to documents in the custody and control of the Ombudsman.

(4) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.

(5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Ombudsman.

5. Exemption from taxation

(1) The Ombudsman shall be exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

(2) For the avoidance of doubt, it is declared that subsection (1) does not apply to or in relation to any salary or other benefit referred to in section 3(6) of this Ordinance payable out of the general revenue." .

20. Transitional

(1) Subject to subsection (2), the person holding office as The Ombudsman immediately before the commencement of this section is, on that commencement, taken to have been appointed as The Ombudsman under section 3 of The Ombudsman Ordinance (Cap. 397) with same terms and conditions as those which were applicable to the person immediately before that commencement.

(2) The person taken to have been appointed as The Ombudsman under subsection (1) holds that office only for the unexpired term under his previous appointment, but is eligible for reappointment under section 3(3) of The Ombudsman Ordinance (Cap. 397).

**Related Amendments to Prevention
of Bribery Ordinance**

21. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding

-

" 98. The Ombudsman." .

Explanatory Memorandum

The main purpose of this Bill is to amend The Ombudsman Ordinance (Cap. 397) (" the Ordinance") -

- (a) to make The Ombudsman become a corporation sole, to amend the definition of " Ombudsman" in section 2(1) of the Ordinance, and to change the references to " the Ombudsman" in sections 3, 4 and 5 of the Ordinance to " the person appointed to be the Ombudsman" (clauses 2, 3, 4 and 5);
- (b) to enable The Ombudsman to appoint advisers (clause 6, new section 6A);
- (c) to provide that The Ombudsman is not a Government servant and does not enjoy the immunity of the Government, but is deemed to be a public servant for the purposes of the Prevention of Bribery Ordinance (Cap. 201) and a public officer for the purposes of the Public Finance Ordinance (Cap. 2) (clause 6, new section 6B);
- (d) to make a minor amendment to the heading to Part III of the Ordinance (clause 7);
- (e) to provide for the general powers of The Ombudsman (clause 8);
- (f) to empower The Ombudsman to charge reasonable fees in respect of services provided by him under the Ordinance (clause 9);

- (g) to empower The Ombudsman to conduct preliminary inquiries (clause 10, new section 11A);
- (h) to empower The Ombudsman to deal with complaints by mediation (clause 10, new section 11B);
- (i) to enable organizations specified in Schedule 1 to the Ordinance to disclose information to The Ombudsman for the purposes of an investigation (clause 11);
- (j) to require persons appointed under new section 6A to maintain secrecy (clause 12);
- (k) to enable The Ombudsman to publish a report on his investigation even if the identity of any person aggrieved, any complainant, or any officer of an organization can be ascertained from the report (clause 13);
- (l) to confer immunity on persons doing anything in good faith in the performance of functions or in the exercise of powers under the Ordinance (clause 15);
- (m) to repeal a provision on The Ombudsman' s annual reports (clause 16);
- (n) to extend the jurisdiction of The Ombudsman to cover the Equal Opportunities Commission and the Privacy Commissioner for Personal Data (clause 18);
- (o) to deal with the financial sides of The Ombudsman (clause 19, new Schedule 1A) -

- (i) section 1 of that Schedule deals with resources;
 - (ii) section 2 of that Schedule provides for the use of surplus funds;
 - (iii) section 3 of that Schedule provides for accounts, audit and annual reports;
 - (iv) section 4 of that Schedule provides for the Director of Audit' s examination;
 - (v) section 5 of that Schedule exempts The Ombudsman from taxation;
- (p) to make a transitional arrangement for the person currently holding office as The Ombudsman (clause 20).

2. The Bill also makes a related amendment to the Prevention of Bribery Ordinance (Cap. 201) to specify The Ombudsman as a public body under that Ordinance so that all its employees are put under control of that Ordinance (clause 21).

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number:
Section: 2	Heading: Interpretation	Version Date: 30/06/1997

- (1) In this Ordinance, unless the context otherwise requires-
- " action" (行動) includes omission, recommendation or decision;
- " head" (首長) in relation to-
- (a) an organization other than the Government Secretariat means the the head, director or equivalent officer of the organization;
 - (b) the Government Secretariat means the head of a subdivision thereof to whom the officer whose action is the subject of the relevant complaint is responsible; (Replaced 44 of 1994 s. 3)
- " investigation" (調查) means an investigation by the Ombudsman under this Ordinance; (Amended 74 of 1996 s. 11)
- " maladministration" (行政失當) means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes-
- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
 - (b) abuse of any power (including any discretionary power) or authority including any action which-
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact; or
 - (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;
- " officer" (人員) includes employee;
- " Ombudsman" (專員) means The Ombudsman appointed under section 3; (Added 74 of 1996 s.4)
- " organization" (機構) means an organization specified in Schedule 1. (Replaced 44 of 1994 s. 3)

(Amended 74 of 1996 s. 4)

- (2) Any reference in this Ordinance to an organization includes a reference to the officers of that organization. (Amended 44 of 1994 s. 3)

(Enacted 1988)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 3	Heading: Appointment and tenure of office	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART II

APPOINTMENT OF THE OMBUDSMAN

(Amended 74 of 1996 s. 11)

(1) For the purpose of conducting investigations in accordance with the provisions of this Ordinance there shall be a public officer known as The Ombudsman. (Amended 74 of 1996 s. 5)

(2) The Ombudsman shall be appointed in writing under the hand of the Chief Executive.

(3) Any person appointed as Ombudsman shall, subject to subsection (4), hold office for a period of 5 years and shall be eligible for reappointment.

(4) A person appointed to be the Ombudsman may-

(a) at any time resign his office by notice in writing to the Chief Executive;

(b) be removed from office by the Chief Executive with the approval by resolution of the Legislative Council on the ground of inability to discharge the functions of his office, or misbehaviour.

(5) The emoluments of the Ombudsman, and the terms and conditions of his appointment, shall be determined by the Chief Executive.

(6) Any salary or other benefit payable to the Ombudsman shall be charged on the general revenue.

(Enacted 1988. Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 4	Heading: Ombudsman to hold no other office	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

The Ombudsman shall not, without the specific approval of the Chief Executive, hold any office of profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(Enacted 1988. Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 5	Heading: Filling of temporary vacancy	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) If the Ombudsman-
- (a) dies;
 - (b) resigns;
 - (c) is removed from office;
 - (d) is absent from Hong Kong; or
 - (e) is for any other reason unable to perform the functions of his office,
- those functions shall, until such time as the Ombudsman resumes the functions of his office or a new Ombudsman is appointed under section 3, be assumed and performed by such person as may be appointed in writing under the hand of the Chief Executive to act as Ombudsman. (Amended 25 of 1998 s. 2)
- (2) Section 4 shall apply to a person appointed to act as Ombudsman as it applies to the Ombudsman.
- (Enacted 1988. Amended 74 of 1996 s. 11)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number:
Section: 7	Heading: Functions of Ombudsman	Version Date: 30/06/1997

PART III

FUNCTIONS OF THE OMBUDSMAN

(Amended 74 of 1996 s. 11)

- (1) The Ombudsman may investigate any action taken by or on behalf of-
- (a) an organization set out in Part I of Schedule 1 in the exercise of its administrative functions; or
 - (b) an organization 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,
- in any case where-
- (i) a complaint is made by a person who claims to have sustained injustice in consequence of maladministration in connection with that action; or
 - (ii) notwithstanding that no complaint has been made to him, he is of the opinion that any person may have sustained injustice in consequence of maladministration in connection with that action. (Replaced 74 of 1996 s. 6)
- (2) The powers conferred on the Ombudsman by this Ordinance shall be exercised in accordance with the provisions of this Ordinance but may be so exercised notwithstanding any provision in any law to the effect that any decision shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the organization whose decision it is shall be challenged, reviewed, quashed, or

called in question. (Amended 44 of 1994 s. 4; 74 of 1996 s. 11)

(3) (Repealed 44 of 1994 s. 4)

(Enacted 1988)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number:
Section: 13	Heading: Evidence	Version Date: 30/06/1997

(1) Subject to section 14, the Ombudsman may summon before him-

- (a) any person, whether or not he is an officer of any organization, who in the opinion of the Ombudsman is able to give any information relating to any action that is being investigated by the Ombudsman; and
- (b) any complainant,

and may examine them and require them to furnish to him any information, and to produce any document or thing which, in the Ombudsman' s opinion, whether or not it is in the custody or under the control of any organization, relates to that action and which may be in the possession or under the control of that person or, as the case may be, of the complainant. (Amended 44 of 1994 s. 8)

(2) The Ombudsman may administer an oath for the purposes of an examination under subsection (1) if he thinks fit.

(3) Except in relation to the subject of any certificate issued under section 14(3)-

- (a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of a public officer, shall apply to its disclosure for the purposes of an investigation under this Ordinance; and
- (b) any requirement by the Ombudsman that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation under this Ordinance shall be sufficient authority for its disclosure or production to the Ombudsman.

(4) The Ombudsman may pay the reasonable expenses of complainants and witnesses incurred during the course of an investigation under this Ordinance.

(Enacted 1988. Amended 74 of 1996 s. 11)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 15	Heading: Ombudsman and staff to maintain secrecy	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) The Ombudsman and every person appointed under section 6 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that-

- (a) arise from any investigation or complaint made to the Ombudsman; and
- (b) come to their actual knowledge in the exercise of their functions. (Replaced 74 of 1996 s. 7)

(2) Subsection (1) shall not apply so as to prevent the Ombudsman or any person appointed under section 6 from-

- (a) disclosing in the course of proceedings for an offence under the Ordinance, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Ombudsman or person so appointed-
 - (i) may be ground for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued. (Replaced 74 of 1996 s. 7)

(3) The Ombudsman may disclose in any report made by him under this Ordinance any matter that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations, other than a matter in respect of which the Chief Executive certifies that its disclosure might prejudice security, defence, or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest. (Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

(4) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$50000 and to imprisonment for 2 years.

(Enacted 1988)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number:
Section: 16A	Heading: Publication of reports	Version Date: 30/06/1997

(1) After making an investigation into any action the Ombudsman may, if he is of the opinion that it is in the public interest so to do, publish a report on the investigation in such manner as he thinks fit.

(2) A report published under subsection (1) shall not be prepared in such manner that the identity of-

- (a) any person aggrieved;
- (b) any complainant; or
- (c) any officer of the organization whose action is the subject of the investigation or who is otherwise involved in the investigation,

can be ascertained from the report.

(3) Nothing in subsection (2) shall be construed as preventing the Ombudsman from disclosing the name of an organization in a report published under subsection (1).

(Added 44 of 1994 s. 10. Amended 74 of 1996 s. 11)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number:
Section: 18	Heading: Privilege	Version Date: 30/06/1997

PART VI

SUPPLEMENTARY

For the purposes of the law of defamation, absolute privilege shall be attached to the publication of any matter-

- (a) by the Ombudsman or his staff to any person for the purpose of an investigation under this Ordinance, or for the purposes of section 16, 16A, 17 or 22; (Amended 44 of 1994 s. 12; 74 of 1996 s. 11)
- (b) (Repealed 44 of 1994 s. 12)

(Enacted 1988)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 22	Heading: Annual report	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) The Ombudsman shall not later than the last day of June in each year make a general report to the Chief Executive on the exercise of the functions of the Ombudsman under this Ordinance during the previous year. (Amended 74 of 1996 s. 11)

(2) The Chief Executive shall cause the report referred to in subsection (1) to be laid before the Legislative Council.

(Enacted 1988. Amended 25 of 1998 s. 2)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 24	Heading: Power to amend Schedule 1	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

The Chief Executive in Council may by order published in the Gazette amend Schedule 1.

(Replaced 44 of 1994 s. 16. Amended 25 of 1998 s. 2)

Chapter: 397	Title: THE OMBUDSMAN ORDINANCE	Gazette Number: L.N. 152 of 2000; L.N. 173 of 2000
Section: 1	Heading: ORGANIZATIONS TO WHICH THIS ORDINANCE APPLIES	Version Date: 01/07/2000

[sections 2 & 24]

PART I

(Amended 44 of 1994 s. 17. Added 74 of 1996 s. 9)

Agriculture, Fisheries and Conservation Department. (Replaced L.N. 331 of 1999)

Airport Authority. (Added L.N. 155 of 1996)

All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility. (Replaced L.N. 155 of 1996)

Architectural Services Department.

Audit Commission. (Amended L.N. 362 of 1997)

* Auxiliary Medical Service (department). (Added L.N. 155 of 1996. Amended 57 of 1997 s. 34)

Buildings Department. (Replaced L.N. 282 of 1993)

Census and Statistics Department.

+ Civil Aid Service (department). (Added L.N. 155 of 1996. Amended 58 of 1997 s. 34)

Civil Aviation Department.

Civil Engineering Department. (Replaced L.N. 183 of 1992)

Civil Service Training and Development Institute. (Added L.N. 155 of 1996)

Companies Registry. (Added 8 of 1993 s. 28)

Correctional Services Department.

Customs and Excise Department.

Department of Health. (Added L.N. 414 of 1989)

Department of Justice. (Amended L.N. 362 of 1997)

Drainage Services Department. (Added L.N. 357 of 1989)

Education Department.

Electrical and Mechanical Services Department.

Employees Retraining Board. (Added L.N. 139 of 1999)

Environmental Protection Department.

Fire Services Department.

Food and Environmental Hygiene Department. (Added 78 of 1999 s. 7)

General Office of the Chief Executive' s Office. (Added L.N. 155 of 1996. Amended 25 of 1998 s. 2)

Government Flying Service. (Added L.N. 242 of 1993)

Government Laboratory.

Government Land Transport Agency.

Government Property Agency. (Added L.N. 181 of 1991)

Government Secretariat.

Government Supplies Department.

Highways Department.

Home Affairs Department. (Replaced L.N. 155 of 1996)

Hong Kong Arts Development Council. (Added 26 of 1995 s. 20)

Hong Kong Housing Authority. (Added 44 of 1994 s. 17)

Hong Kong Housing Society. (Added L.N. 155 of 1996)

Hong Kong Monetary Authority. (Added L.N. 97 of 1993)
Hong Kong Sports Development Board. (Added L.N. 139 of 1999)
Hospital Authority. (Added L.N. 420 of 1991)
Hospital Services Department. (Added L.N. 414 of 1989)
Housing Department.
Immigration Department.
Information Services Department.
Information Technology Services Department. (Added L.N. 373 of 1989)
Inland Revenue Department.
Intellectual Property Department. (Added L.N. 236 of 1990)
Invest Hong Kong. (Added L.N. 152 of 2000)
Kowloon-Canton Railway Corporation. (Added 44 of 1994 s. 17)
Labour Department.
Land Development Corporation. (Added L.N. 155 of 1996)
Land Registry. (Added 8 of 1993 s. 28)
Lands Department. (Added L.N. 282 of 1993)
Legal Aid Department.
Legislative Council Secretariat. (Replaced 14 of 1994 s. 24)
Leisure and Cultural Services Department. (Added 78 of 1999 s. 7)
Management Services Agency. (Added L.N. 383 of 1993)
Mandatory Provident Fund Schemes Authority. (Added L.N. 139 of 1999)
Marine Department.
Observatory. (Amended 25 of 1998 s. 2)
Office of the Telecommunications Authority. (Added L.N. 242 of 1993)
Official Languages Agency. (Added L.N. 155 of 1996)
Official Receiver' s Office. (Added L.N. 183 of 1992)
Planning Department. (Added L.N. 414 of 1989)
Post Office.
Printing Department.
Radio Television Hong Kong.
Rating and Valuation Department.
Registration and Electoral Office. (Added L.N. 251 of 1994)
Registry of Trade Unions.
Secretariat of the Standing Commission on Civil Service Salaries and Conditions of Service.
(Added L.N. 155 of 1996)
Secretariat of the Standing Committee on Disciplined Services Salaries and Conditions of
Service. (Added L.N. 155 of 1996)
Securities and Futures Commission. (Added 44 of 1994 s. 17)
Social Welfare Department.
Technical Education and Industrial Training Department.
Television and Entertainment Licensing Authority.
Territory Development Department.
The Hong Kong Examinations Authority. (Added L.N. 139 of 1999)
Trade and Industry Department. (Replaced L.N. 173 of 2000)
Transport Department.
Treasury.
University Grants Committee, Secretariat. (Amended L.N. 35 of 1995)
Vocational Training Council. (Added L.N. 155 of 1996)
Water Supplies Department.
(Enacted 1988. Amended L.N. 76 of 1989; L.N. 373 of 1989; 8 of 1993 s. 28; 78 of 1999 s.
7; 13 of 2000 s. 65; L.N. 152 of 2000)

PART II

Independent Commission Against Corruption.

Hong Kong Auxiliary Police Force. (Amended 25 of 1998 s. 2)

Hong Kong Police Force. (Amended 25 of 1998 s. 2)

Secretariat of the Independent Police Complaints Council.

Secretariat of the Public Service Commission.

(Added 74 of 1996 s. 9)

* Please see the saving provisions contained in section 33(4) of Cap 517.

+ Please see the saving provisions contained in section 33(4) of Cap 518.

Chapter: 201	Title: PREVENTION OF BRIBERY ORDINANCE	Gazette Number: L.N. 78 of 2001
Section: 1	Heading: PUBLIC BODIES	Version Date: 01/04/2001

[sections 2(1) & 35]
(Amended 20 of 1999 s. 6)

1. Hong Kong Telecom International Limited. (Replaced 20 of 1999 s. 6)
2. China Light and Power Company Limited.
3. (Repealed 20 of 1999 s. 6)
4. The Chinese University of Hong Kong. (Replaced 20 of 1999 s. 6)
5. Hong Kong Arts Development Council. (Replaced 26 of 1995 s. 19)
6. (Repealed L.N. 198 of 1999)
7. Fish Marketing Organization.
8. Hong Kong and China Gas Company Limited.
9. Hong Kong and Yaumati Ferry Company Limited.
10. Hong Kong Air Cargo Terminals Limited.
11. Hong Kong Building and Loan Agency.
12. Hong Kong Commercial Broadcasting Company Limited.
13. Hong Kong Electric Company Limited.
14. Hong Kong Export Credit Insurance Corporation.
15. Hong Kong Housing Authority.
16. Hong Kong Housing Society.
17. (Repealed 50 of 1987 s. 13)
18. The Hong Kong Polytechnic University. (Replaced 94 of 1994 s. 23)
19. Hong Kong Productivity Council.
20. Hong Kong Settlers Housing Corporation Limited.
21. Hong Kong Telephone Company Limited.
22. Hong Kong Tourism Board. (Replaced 3 of 2001 s. 45)
23. Hong Kong Trade Development Council.
24. Hong Kong Tramways Limited.
25. Kowloon Motor Bus Company (1933) Limited.
26. (Repealed L.N. 249 of 1990)
27. Ocean Park Corporation. (Amended 35 of 1987 s. 40)
28. Peak Tramways Company Limited.
29. Asia Television Limited. (Replaced L.N. 31 of 1983)
30. Hong Kong Jockey Club. (Amended 20 of 1999 s. 6)
31. The Hong Kong Jockey Club (Charities) Limited. (Replaced L.N. 512 of 1994)
32. " Star" Ferry Company Limited.
33. Television Broadcasts Limited.
34. The Community Chest of Hong Kong.
35. University of Hong Kong.
36. Vegetable Marketing Organization.
37. MTR Corporation Limited. (Added 36 of 1975 s. 31. Amended 13 of 2000 s. 65)
38. The Hong Kong Industrial Estates Corporation. (Added 17 of 1976 s. 13. Amended 16 of 1977 s. 43)
39. The Hong Kong Examinations Authority. (Added 23 of 1977 s. 17)
40. Consumer Council. (Added 56 of 1977 s. 22)
41. (Repealed 20 of 1999 s. 6)
42. The Vocational Training Council. (Added 6 of 1982 s. 25)
43. The Kowloon-Canton Railway Corporation. (Added 73 of 1982 s. 39)

44. New Lantao Bus Company (1973) Limited. (Added L.N. 160 of 1983)
45. Hong Kong Baptist University. (Added 50 of 1983 s. 34. Amended 93 of 1994 s. 39)
46. City University of Hong Kong. (Added 65 of 1983 s. 25. Amended 92 of 1994 s. 32)
47. The Hong Kong Academy for Performing Arts. (Added 38 of 1984 s. 28)
48. The Hong Kong University of Science and Technology. (Added 47 of 1987 s. 25)
49. Broadcasting Authority. (Added 49 of 1987 s. 17)
50. Hong Kong Council on Smoking and Health. (Added 56 of 1987 s. 21)
51. Land Development Corporation. (Added 71 of 1987 s. 20)
52. Securities and Futures Commission. (Added 10 of 1989 Schedule 2)
53. The Open University of Hong Kong. (Added 22 of 1987 Schedule 2. Amended L.N. 176 of 1989. Replaced 50 of 1997 s. 29)
54. Hong Kong Sports Development Board. (Added 8 of 1990 s. 18)
55. Travel Industry Council of Hong Kong. (Added L.N. 62 of 1990)
56. (Repealed 20 of 1999 s. 6)
57. Hong Kong Council for Academic Accreditation. (Added 15 of 1990 s. 26)
58. The Hospital Authority (including any committee established by the Hospital Authority). (Added 68 of 1990 s. 24)
59. The Airport Authority. (Added L.N. 249 of 1990. Replaced 71 of 1995 s. 49)
60. Metro Broadcast Corporation Limited. (Added L.N. 184 of 1991)
61. Hong Kong Academy of Medicine. (Added 55 of 1992 s. 16)
62. Lingnan University. (Added 72 of 1992 s. 29. Replaced 54 of 1999 s. 29)
63. Citybus Limited. (Added L.N. 330 of 1992)
64. New Hong Kong Tunnel Company Limited. (Added L.N. 382 of 1992)
65. Tate' s Cairn Tunnel Company Limited. (Added L.N. 382 of 1992)
66. Hong Kong Industrial Technology Centre Corporation. (Added 21 of 1993 s. 25)
67. (Repealed 134 of 1997 s. 85)
68. Tradelink Electronic Commerce Limited. (Replaced L.N. 125 of 1998)
69. Travel Industry Compensation Fund Management Board. (Added 51 of 1993 s. 8)
70. Western Harbour Tunnel Company Limited. (Added 72 of 1993 s. 71)
71. Wharf Cable Limited. (Added L.N. 384 of 1993)
72. The Legislative Council Commission. (Added 14 of 1994 s. 24)
73. The Hong Kong Institute of Education. (Added 16 of 1994 s. 25)
74. Hong Kong Quality Assurance Agency. (Added L.N. 409 of 1994)
75. Equal Opportunities Commission. (Added 67 of 1995 s. 91)
76. The Security and Guarding Services Industry Authority. (Added 97 of 1994 s. 34)
77. Legal Aid Services Council. (Added 17 of 1996 s. 14)
78. Route 3 (CPS) Company Limited. (Added 33 of 1995 s. 65)
79. Privacy Commissioner for Personal Data. (Added 81 of 1995 s. 72)
80. Authorized Persons Registration Committee. (Added 54 of 1996 s. 27)
81. Structural Engineers Registration Committee. (Added 54 of 1996 s. 27)
82. Contractors Registration Committee. (Added 54 of 1996 s. 27)
83. The Estate Agents Authority. (Added 48 of 1997 s. 57)
84. Long Win Bus Company Limited. (Replaced 20 of 1999 s. 6)
- 84A. Long-term Prison Sentences Review Board. (Added 86 of 1997 s. 44. Amended 20 of 1999 s. 6)
85. Electoral Affairs Commission. (Added 129 of 1997 s. 24)
86. Mandatory Provident Fund Schemes Authority. (Added 4 of 1998 s. 8)
87. New World First Bus Services Limited. (Added L.N. 239 of 1998)
88. The Hong Kong Mortgage Corporation Limited. (Added L.N. 313 of 1998)
89. Hong Kong Note Printing Limited. (Added L.N. 313 of 1998)
90. Exchange Fund Investment Limited. (Added L.N. 16 of 1999)
91. The Stock Exchange of Hong Kong Limited. (Added 20 of 1999 s. 6)
92. Hong Kong Futures Exchange Limited. (Added 20 of 1999 s. 6)

93. Hong Kong Securities Clearing Company Limited. (Added 20 of 1999 s. 6)
94. The SEHK Options Clearing House Limited. (Added 20 of 1999 s. 6)
95. HKFE Clearing Corporation Limited. (Added 20 of 1999 s. 6)
96. Hong Kong Exchanges and Clearing Limited. (Added 12 of 2000 s. 23)
(Replaced L.N. 272 of 1974)
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Note 1-S. 18 of 48 of 1996 reads as follows-

" 18. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 17 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance." .

Note 2-For text of s. 14A prior to its repeal by s. 17 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.

Note 3-For text of s. 14C prior to its amendment by s. 7 of 48 of 1996, please see the Revised Edition of the Laws and ss. 2 & 3 of 8 of 1993.
