

**Committee Stage Amendments
to The Ombudsman (Amendment) Bill 2001
Proposed by the Administration**

The enclosed draft CSAs aim to -

- (a) amend section 3(1) to (3) of The Ombudsman Ordinance (clause 3) and make a consequential change to the definition of "Ombudsman" in section 2(1) of the Ordinance (clause 2) (item 2 of the checklist refers);
- (b) amend section 6(2) of The Ombudsman Ordinance to transfer the power of determining terms and conditions of The Ombudsman's staff to The Ombudsman (new clause 5A) (para. 2 on page 6 of our paper at Annex A refers);
- (c) make it clear that the advisers to be appointed under the proposed section 6A are those who provide technical or professional advice (clause 6) (item 5 of the checklist refers);
- (d) relocate the proposed section 7A to become section 7(1A) (clause 8) (para. 2 on page 2 of our paper at Annex A refers);
- (e) exclude the person appointed as The Ombudsman from acting as a mediator personally under the proposed section 11B (clause 10) (item 8 of the checklist refers); and
- (f) expand the savings and transitional provisions (clause 20) (para.1 on page 7 of our paper issued on 13 July 2001 refers).

Other consequential changes to the long title of and part headings of the Bill are also included.

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THE OMBUDSMAN (AMENDMENT) BILL 2001

COMMITTEE STAGE

**Amendments to be moved by the Chief Secretary
for Administration**

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	(a) By deleting "and" and substituting a comma. (b) By deleting the full stop and substituting ", and to provide for related matters."
New	By adding before clause 1 - "PART I PRELIMINARY".
New	By adding before clause 2 - "PART II AMENDMENTS TO THE OMBUDSMAN ORDINANCE".
2	By deleting "3(2)(a)" and substituting "3(1)".
3	By deleting paragraphs (a) and (b) and substituting -

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"(a) by repealing subsections (1) to (3) and substituting -

"(1) For the purposes of this Ordinance, there shall be a corporation sole known as "The Ombudsman".

(2) The Ombudsman shall have perpetual succession and -

(a) may sue and be sued in that corporate name; and

(b) shall have an official seal.

(3) The Chief Executive shall in writing under his hand appoint a person to be the Ombudsman.

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

New

By adding -

"5A. Staff of Ombudsman

Section 6(2) is amended by repealing everything after "shall be" and substituting "determined by the Ombudsman."."

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6 In the proposed section 6A, by adding "technical or professional"
before "advisers".

8 By deleting the clause and substituting -

"8. Functions and powers of Ombudsman

Section 7 is amended by adding -

"(1A) 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

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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."."

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In the proposed section 11B -

- (a) in subsection (2), by deleting everything after "to be"
and substituting "a person authorized under subsection
(3).";

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- (b) in subsection (3), by deleting "(2)(b)" and substituting "(2)".

New By adding before clause 20 -

"PART III

SAVINGS AND TRANSITIONAL PROVISIONS".

20 By deleting the clause and substituting -

"20. Interpretation

In this Part, unless the context otherwise requires -

"amended Ordinance" (經修訂條例) means The Ombudsman Ordinance as amended by Part II;

"appointed day" (指定日期) means the day on which Part II comes into operation;

"former Ombudsman" (前專員) means The Ombudsman within the meaning of The Ombudsman Ordinance;

"new Ombudsman" (新專員) means The Ombudsman within the meaning of the amended Ordinance;

"The Ombudsman Ordinance" (《申訴專員條例》) means The Ombudsman Ordinance (Cap. 397)

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that is in force immediately before the appointed day.

20A. Vesting of property, rights and liabilities

(1) All property, rights and liabilities of the former Ombudsman shall be vested in the new Ombudsman as from the appointed day by virtue of this section.

(2) Nothing in this Ordinance affects the validity of anything lawfully done by or in relation to the former Ombudsman before the appointed day.

(3) Anything that immediately before the appointed day is in the process of being done by or in relation to the former Ombudsman may be continued by or in relation to the new Ombudsman to the extent that it is consistent with this Ordinance.

20B. Continuance of appointment

(1) Subject to subsection (2), the person holding office as The Ombudsman under The Ombudsman Ordinance immediately before the appointed day is taken as from that day to have been appointed as The Ombudsman under section 3(3) of the amended Ordinance with the same terms and conditions as those which were

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applicable to the person immediately before that day.

(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(3A) of the amended Ordinance.

(3) Subject to subsection (4), a person who has been appointed by the former Ombudsman under section 6 of The Ombudsman Ordinance and who holds office immediately before the appointed day is taken as from that day to have been appointed by the new Ombudsman under section 6 of the amended Ordinance to the same office with the same terms and conditions as those which were applicable to the person immediately before that day.

(4) The person taken to have been appointed by the new Ombudsman under subsection (3) holds his office only for the unexpired term under his previous appointment under section 6 of The Ombudsman Ordinance.

(5) The effect of subsection (3) in relation to any employment contract with the former Ombudsman that is in force immediately before the appointed day is to modify that

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contract as from that day by substituting the new Ombudsman for the former Ombudsman and, accordingly and notwithstanding any other law, employment with the former Ombudsman and the new Ombudsman under an employment contract to which that subsection applies is taken to be a single continuing employment with a single employer."

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By deleting the heading "**Related Amendments to Prevention of Bribery Ordinance**" before the clause and substituting -

"PART IV

RELATED AMENDMENTS TO PREVENTION OF
BRIBERY ORDINANCE".