

**Information Notes for the
Legislative Council Members' Meeting with The Ombudsman
on 5 December 2000**

(III) Discussion items raised by Members (11:35 am – 12:30 pm)

(a) Cases of partial implementation of The Ombudsman's recommendations
(raised by Hon LAU Kong-wah)

The Hon. LAU Kong-wah's question focuses on what happens after the Ombudsman has made a report that contains recommendations for rectification or improvement. The answer requires an understanding of the ombudsman system.

The ombudsman system was introduced in Hong Kong by the Commissioner for Administrative Complaints Ordinance (retitled The Ombudsman Ordinance in 1996) of 1988. As an office created by statute, the functions and powers of The Ombudsman are circumscribed by The Ombudsman Ordinance. In gist, the function of the Ombudsman is to investigate complaints made by members of the public against the administrative action of the 90 government departments and 15 publicly funded organizations listed in Schedule 1 to the Ordinance.

The Ordinance contains detailed provisions regarding the jurisdiction of the Ombudsman. It also contains stipulations relating to investigations undertaken by the Ombudsman, including the declaration of investigation, conduct of proceedings, production of information or evidence and the calling of witnesses.

What duties does the Ordinance impose on The Ombudsman after each investigation? They are as follows –

- (a) *vis-à-vis the complainant* - Section 17 obliges The Ombudsman to inform the complainant of –
- the result of his investigation
 - any report or recommendation made under section 16 and any comments made thereon by or on behalf of the head of the organization affected;
 - such comments on the matter as the Ombudsman thinks fit; and
 - such comments, if any, as the Chief Executive may require
- The Ombudsman to forward to the complainant.
- (b) *vis-à-vis the organization being complained against* – to inform the head of the organization of the result of The Ombudsman's

investigation unless a report is already being made under section 16(1).

- (c) ***Reports by The Ombudsman under section 16*** - Section 16 provides that if an investigation reveals any evidence of maladministration or official action or omission which the Ombudsman thinks should be rectified, the Ombudsman may submit a report to the head of the organization affected or to the Chief Executive if the Ombudsman considers it appropriate in the particular circumstances of the case not to report to the head of the organization. The report should contain the Ombudsman's opinion and his reasons there of, together with a statement of any remedy that he considers should be provided or any recommendation that he thinks fit to make. The Ombudsman may specify a time within which the Ombudsman is of the opinion it is reasonable in all the circumstances for the report to be acted on.

Where a report to a head of the organization is not, in the opinion of The Ombudsman, adequately acted upon within the time specified or such reasonable time as the Ombudsman considers appropriate, the Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive. Where the Ombudsman is of the opinion that a serious irregularity or injustice has taken place, he may in addition to such a report, make a further report stating his opinion and his reasons to the Chief Executive.

Within a period of 1 month, or such longer period as the Chief Executive may determine, after the receipt of a report from the Ombudsman, a copy of the report shall be laid before the Legislative Council.

As explained at the last meeting, this Office has established a mechanism to monitor on a quarterly basis the progress of implementation of our recommendations by Government departments and other organizations. Generally speaking, a great majority of recommendations are implemented by departments and organizations. There may be up to 5% of recommendations which departments could not implement in full or even reject. These may be due to resource and policy constraints. In some cases, departments may propose alternative remedial or improvement measures. In such cases, this Office will evaluate whether the proposed alternatives could achieve the desired outcome as intended by the original recommendation. If so, the Ombudsman may accept the alternative proposal and not insist on implementation of the original recommendation. If not, the Ombudsman will

have to consider taking action in pursuance of section 16(3) to (5) of the Ordinance.

Thus it can be seen that the ombudsman's investigations and recommendations do not lead to legal remedies. The functions of the Ombudsman are to receive, investigate and report on complaints. But, while he has the duty to make judgments about the correctness of both administrative decisions and the procedures by which they are made, the Ombudsman's judgments are not binding on the government or the organization affected. He has no power to substitute his own decisions for those of officials. In fact, section 19 specifically provides that an investigation by the Ombudsman shall not affect any action taken by the head of the organization affected, or his power or duty to take further action with respect to any decision which is subject to the investigation. Instead, in appropriate cases, investigation by the Ombudsman may lead to recommendations that can be acted upon "politically".

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