

**Subcommittee to study the proposed accountability system
for principal officials and related issues**

References to the Chief Executive in Council in the Laws of Hong Kong

Introduction

At the meeting of the Subcommittee on 7 May 2002, Members discussed the Administration's paper on references to the Chief Executive in Council in the laws of Hong Kong (LC Paper No. CB(2)1822/01-02(02)). The Administration was requested to provide more information on the 53 references relating to appeals to the CE in Council. This paper sets out the Administration's response.

References to the CE in Council

2. We have examined the 689 references to the CE in Council in the laws of Hong Kong. We have found 53 references relating to appeals to the CE in Council. The relevant provisions are summarized in the Annex. As explained in the previous paper (LC Paper No. CB(2)1822/01-02(02)), we are of the opinion that it is lawful for such appeals to be heard by CE in Council both now and under the accountability system. The fact that, under the accountability system, there will be more principal officials in Executive Council does not make any material difference to the criteria for appropriateness already applied.

Principal officials connected with an appeal

3. It has been suggested that problems may arise when an appeal goes to ExCo from the decision of a bureau or department, since the principal official who heads that bureau or department will now be a member of ExCo. We believe that the situation can be resolved by the current arrangement that legal advice is given to the principal official concerned as to whether he/she should stand down from the particular appeal.

Decision of CE in Council

4. At the meeting, a Member asked whether other remedies are available if an appellant is not satisfied with the decision of the CE in Council. The position is as follows. Remedies in respect of administrative decisions that are subject to a right of appeal or objection to the CE in Council are governed by section 64(3) of Cap. 1. According to existing judicial interpretations of that section, where an appeal lies to the CE in Council, this is an administrative remedy that is additional to, and not a substitute for, any remedy by way of judicial review of the original administrative decision. If an appeal is made to the CE in Council and rejected, it is still possible for the appellant to apply for judicial review of the original administrative decision.

Constitutional Affairs Bureau

10 May 2002

APPEALS TO CHIEF EXECUTIVE IN COUNCIL

| Serial Number | Ordinance/Subsidiary Legislation | Relevant Provision | Whose Decision is Being Appealed Against? |
|----------------------|--|---|--|
| 1 | TRUSTEE ORDINANCE (Cap.29) | <u>Section 78</u> (3) If the Registrar of Companies is not satisfied that all the requirements of section 77 have been complied with, he shall refuse to register the company as a trust company: Provided that the company may appeal from such refusal to the Chief Executive in Council, whose decision shall be final. | The Registrar of Companies. |
| 2 | TRUSTEE ORDINANCE (Cap.29) | <u>Section 80</u> (2) If at any time, by reason of the decline in value of any investments so held by the Director of Accounting Services or of increase of the gross liabilities of any trust company, the Registrar of Companies is of opinion that additional security ought to be furnished by the trust company, he may order the company to make, within a period to be stated in the order, a further deposit of investments (being investments contemplated by section 77(2)(e)) of a specified value with the Director of Accounting Services: Provided that the company may appeal from such order to the Chief Executive in Council, whose decision shall be final. | The Registrar of Companies. |
| 3 | CO-OPERATIVE SOCIETIES ORDINANCE (Cap.33) | <u>Section 7</u> (1) If the Registrar is satisfied that a society has complied with the provisions of this Ordinance and the rules, and that its proposed by-laws are not contrary to this Ordinance or to the rules, he may, if he thinks fit, register the society and its by-laws. An appeal shall lie to the Chief Executive in Council against the refusal of the Registrar to register any society within one month from the date of such refusal. | The Registrar of Co-operative Societies. |

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| 4 | CO-OPERATIVE SOCIETIES ORDINANCE (Cap.33) | <p><u>Section 10</u></p> <p>(3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Ordinance or to the rules, he may, if he thinks fit, register the amendment. An appeal shall lie to the Chief Executive in Council against the refusal of the Registrar to register any amendment of any by-law within one month from the date of such refusal.</p> | The Registrar of Co-operative Societies. |
| 5 | ANTIQUITIES AND MONUMENTS ORDINANCE (Cap.53) | <p><u>Section 2C</u></p> <p>(4) The Chief Executive, upon considering an objection made under subsection (3), may direct that-</p> <p>(a) the declaration be withdrawn; or</p> <p>(b) the objection be referred to the Chief Executive in Council.</p> <p>(5) The Chief Executive in Council, upon considering an objection referred to him under subsection (4), may direct that-</p> <p>(a) the declaration shall stand;</p> <p>(b) the declaration shall stand, subject to such variations or conditions as he thinks fit; or</p> <p>(c) the declaration be withdrawn.</p> <p>(6) A direction of the Chief Executive under subsection (4) or of the Chief Executive in Council under subsection (5) shall be final.</p> | The Secretary for Home Affairs. |

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| 6 | EXCHANGE FUND ORDINANCE (Cap.66) | <p><u>Section 3A</u></p> <p>(3) Any authorized institution aggrieved by any requirement imposed [by the Financial Secretary] on it under subsection (1) or by any addition or variation made [by the Financial Secretary] under subsection (2) may appeal to the Chief Executive in Council against such requirement, addition or variation.</p> <p>(4) The Chief Executive in Council may determine an appeal under this section by confirming, varying or reversing the requirement, addition or variation against which the appeal was lodged.</p> | The Financial Secretary. |
| 7 | FERRY SERVICES ORDINANCE (Cap.104) | <p><u>Section 28</u></p> <p>(7) Any person whose application for a licence is not granted by the Commissioner may appeal in writing-</p> <p>(a) against the decision of the Commissioner, within 28 days of the date of such decision, to the Secretary for Transport who may confirm or set aside such decision after considering any written representations submitted to him by the appellant and the Commissioner in respect of that decision; and</p> <p>(b) if he is aggrieved by the decision of the Secretary for Transport, to the Chief Executive in Council within 28 days of the date of that decision, and the decision of the Chief Executive in Council on any such appeal shall be final.</p> | The Secretary for Transport. |

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| 8 | FERRY SERVICES ORDINANCE (Cap.104) | <p><u>Section 41</u></p> <p>(1) A grantee or licensee aggrieved by any decision, direction or requirement of the Secretary for Transport, the Commissioner, the Director of Civil Engineering or the Director of Marine or any person authorized by any one of them, under this Ordinance or the franchise or licence may, within 28 days of the giving or making of the decision, direction or requirement, appeal by petition to the Chief Executive in Council, and the decision of the Chief Executive in Council on any such appeal shall be final.</p> <p>(2) Where a grantee or licensee appeals under subsection (1), the decision, direction or requirement, as the case may be, shall not have effect until the appeal has been determined, unless the Chief Executive in Council otherwise directs.</p> | The Secretary for Transport/ The Commissioner for Transport/ The Director of Civil Engineering/ The Director of Marine/ Any person authorized by any one of them. |
| 9 | TRAMWAY ORDINANCE (Cap.107) | <p><u>Section 6</u></p> <p>(4) If an owner is aggrieved by the issue of a certificate [by the Director of Highways] in accordance with the provisions of subsection (2), he may, at any time during such period of one month as is referred to in subsection (3) on notice to the company, appeal by petition to the Chief Executive in Council and on such appeal, the Chief Executive in Council, after hearing the Director, may confirm or revoke such certificate.</p> | The Director of Highways. |

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| 10 | MISCELLANEOUS LICENCES REGULATIONS (Cap.114A) | <p><u>Regulation 119</u></p> <p>(2) On the issue or renewal of any dancing school licence the licensing authority may specify, by endorsement thereon-</p> <ul style="list-style-type: none"> (a) the minimum number of lamps required to be a light on the premises at all times when the premises are, under paragraph (1), required to be lighted; (b) the minimum wattage of each such lamp; (c) the sitting of each such lamp; (d) the colour of the bulb of, and the colour and type of the shade which may be used in connection with, each such lamp; and (e) such period of grace (if any) as the licensing authority may consider necessary for the purpose of enabling compliance with any endorsement made as aforesaid; <p>and where any such endorsement has been made on a licence in accordance with the foregoing provisions of this paragraph, then, subject to the provisions of paragraph (3) and the decision of the Chief Executive in Council on any appeal thereunder against such endorsement, the lighting on the premises shall comply therewith at all times when the premises are, under paragraph (1), required to be lighted:</p> <p>Provided that where any period of grace has been granted in respect of any endorsement, non-compliance therewith during such period shall not constitute a contravention of this paragraph.</p> | The Commissioner for Television and Entertainment Licensing. |

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| | | <p>(3) Where the licensee is aggrieved by any endorsement made on his licence pursuant to paragraph (2) or by the failure to grant a period of grace in respect of any endorsement, he may appeal by way of petition against such endorsement or such failure to the Chief Executive in Council, and in the event of such an appeal-</p> <ul style="list-style-type: none"> (a) the provisions of regulation 8 shall apply in respect thereof, (b) the Chief Executive in Council may cancel or vary the endorsement appealed against, or grant a period of grace where the failure of the licensing authority to grant such a period is the subject of the appeal; (c) written notice of the decision of the Chief Executive in Council shall be given to the licensee; (d) pending the giving of written notice to the licensee as aforesaid, the endorsement appealed against, or, where the appeal is against the failure of the licensing authority to grant any or a sufficient period of grace in respect of any endorsement, that endorsement, shall have no effect, and the period of grace (if any) applicable in respect of any such endorsement as aforesaid, whether granted by the licensing authority or the Chief Executive in Council, shall not commence or be deemed to have commenced to run until the giving of such written notification to the licensee. | |

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| 11 | GOVERNMENT RENT AND PREMIUM (APPORTIONMENT) ORDINANCE (Cap.125) | <p><u>Section 21</u></p> <p>(1) Where the Director of Lands decides not to exercise his powers under section 5 or 12 following an application by the owner of a section or relevant interest, he shall give by post to the applicant notice of the ground on which he decided not to exercise those powers.</p> <p>(2) Where the Director of Lands decides not to exercise his powers under section 12 after notice has been published in the Gazette under section 18, he shall cause to be published in the Gazette and affixed in a conspicuous position in or on the building notice of the ground on which he decided not to exercise those powers.</p> <p>(3) Within 3 months after the giving of notice under subsection (1), the applicant may appeal by way of petition to the Chief Executive in Council.</p> <p>(4) Within 3 months after the publication in the Gazette of notice under subsection (2), the owner of any relevant interest may appeal by way of petition to the Chief Executive in Council.</p> | The Director of Lands. |

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| 12 | GOVERNMENT RIGHTS (RE-ENTRY AND VESTING REMEDIES) ORDINANCE (Cap.126) | <p><u>Section 9</u></p> <p>(1) Upon consideration of a petition under section 8, the Chief Executive may-</p> <ul style="list-style-type: none"> (a) order the cancellation of the memorial of re-entry so far as it affects the lands and tenements in respect of which the petition was made or the cancellation of the vesting notice so far as it affects the relevant interest in respect of which the petition was made, upon such terms as to costs, expenses, damages, compensation, penalty or otherwise as he shall in his discretion think fit; or (b) direct that the petition be referred to the Chief Executive in Council. <p>(2) The Chief Executive in Council, upon considering a petition referred to him under subsection (1), may-</p> <ul style="list-style-type: none"> (a) order the cancellation of the memorial of re-entry so far as it affects the lands and tenements in respect of which the petition was made or the cancellation of the vesting notice so far as it affects the relevant interest in respect of which the petition was made, upon such terms as to costs, expenses, damages, compensation, penalty or otherwise as he shall in his discretion think fit; or (b) dismiss the petition. | Any public officer authorised by the Chief Executive. |

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| 13 | FORESHORE AND SEA-BED (RECLAMATIONS) ORDINANCE (Cap.127) | <p><u>Section 8</u></p> <p>(1) Where at the expiry of the time for the making of objections under section 6 in respect of a proposed reclamation any objection has been delivered under that section, the Director shall, within a period of 9 months after the expiry of that time, or within such further period of not more than 6 months after the expiry of that period as may, upon the application of the Director, be allowed by the Chief Executive having regard to the circumstances of the case, submit to the Chief Executive in Council for consideration the proposed reclamation and any such objection, and the Chief Executive in Council shall consider the proposed reclamation and every objection and may-</p> <ul style="list-style-type: none"> (a) decline to authorize the reclamation; (b) authorize the reclamation in part only and defer for further consideration at such future time as the Chief Executive in Council shall specify, any objection which relates to the remaining part of the reclamation not so authorized; or (c) authorize the whole of the reclamation. <p>(2) Where a reclamation is authorized under subsection (1)(b) or (c), the plan relating to such reclamation shall be subject to such modifications and conditions as the Chief Executive in Council thinks fit.</p> | The Director of Lands. |

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| 14 | PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (Cap.132) | <p><u>Section 146</u></p> <p>(1) In any appeal to him under the provisions of this Ordinance, the Chief Executive in Council may, at any time in his discretion, direct a case to be stated for the opinion of the Court of Appeal on any question of law involved in such appeal. The terms of such case shall be agreed upon by the parties concerned, or, in the event of their failure to agree, shall be settled by the Court of Appeal. The Court of Appeal shall hear and determine the question of law arising on any case stated as aforesaid, and shall remit the matter to the Chief Executive in Council who shall give effect by order to the finding of the court. The costs of such hearing shall be in the discretion of the court.</p> <p>(2) Any party to the appeal shall be entitled to be heard by counsel on the hearing of any case so stated.</p> <p>(3) The Clerk to the Executive Council shall give the appellant 7 days' notice of the hearing of the appeal, and shall, at the same time, furnish the appellant with a copy of the evidence and documents submitted by the respondent for the consideration of the Chief Executive in Council.</p> | Director of Food and Environmental Hygiene |

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| 15 | PUBLIC HEALTH (ANIMALS AND BIRDS) ORDINANCE (Cap.139) | <p><u>Section 11</u></p> <p>(1) Whenever any person is dissatisfied with the exercise of the discretion of the Director or of any person to whom discretionary power is given under this Ordinance in respect of any act, matter or thing which is by this Ordinance made subject to the exercise of the discretion of such authority, or with any action or decision of the Director or of any such person either as to the carrying out of or the meaning of any of the provisions of this Ordinance, or whenever any of the provisions of this Ordinance are, owing to special conditions, undesirable, the person so dissatisfied may, unless proceedings have already been taken before a magistrate in relation thereto, appeal to the Chief Executive in Council, who, if in his opinion the exercise of such discretion or such action or decision requires modification, revocation or setting aside, or such special conditions exist as render any such provision undesirable, may make such order in respect thereof as may be just.</p> <p>(2) The grounds of such appeal shall be concisely stated in writing, and the appellant may, if he so desires, be present at the hearing of such appeal and be heard in its support either by himself or by his representative, and the Chief Executive in Council shall thereafter determine the matter in the absence of, and without further reference to, the Director.</p> | The Director of Agriculture, Fisheries and Conservation/ Any Assistant Director of Agriculture, Fisheries and Conservation/ Any person to whom discretionary power is given under Cap. 139. |

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| 16 | PUBLIC HEALTH (ANIMALS AND BIRDS) ORDINANCE (Cap.139) | <p><u>Section 12</u></p> <p>(1) In any appeal under the provisions of section 11 the Chief Executive in Council may at any time in his discretion direct a case to be stated for the opinion of the Court of Appeal on any question of law involved in any appeal submitted to him. The terms of such case shall be agreed upon by the parties concerned, or in the event of their failure to agree shall be settled by the Court of Appeal. The Court of Appeal shall hear and determine the question of law arising on any case stated as aforesaid, and shall remit the matter to the Chief Executive in Council who shall give effect by order to the finding of the court. The costs of such hearing shall be in the discretion of the court.</p> <p>(2) Any party to the appeal shall be entitled to be heard by counsel on the hearing of any case so stated.</p> <p>(3) No proceedings by way of mandamus, injunction, prohibition or other order shall be taken against the Chief Executive in Council in respect of anything arising out of this section.</p> <p>(4) The Clerk to the Executive Council shall give the appellant seven days' notice of the hearing of the appeal, and shall at the same time furnish the appellant with a copy of the evidence and documents submitted by the respondent for the consideration of the Chief Executive in Council:</p> <p>Provided that nothing herein contained shall be deemed to prevent any person from applying to the Court of First Instance for a mandamus, injunction, prohibition or other order, should he elect so to do instead of appealing to the Chief Executive in Council under section 11.</p> | The Director of Agriculture, Fisheries and Conservation/ Any Assistant Director of Agriculture, Fisheries and Conservation/ Any person to whom discretionary power is given under Cap. 139. |

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| 17 | PUBLIC HEALTH (ANIMALS AND BIRDS) ORDINANCE (Cap.139) | <p><u>Section 13</u> Every order of the Chief Executive in Council on any appeal shall be final and may be enforced by the Court of First Instance as if it had been an order of that court.</p> | The Director of Agriculture, Fisheries and Conservation/ Any Assistant Director of Agriculture, Fisheries and Conservation/Any person to whom discretionary power is given under Cap. 139. |
| 18 | SOCIETIES ORDINANCE (Cap.151) | <p><u>Section 5B</u> The society, the branch, an office-bearer or a member of the society or the branch who is aggrieved by the decision of the Societies Officer to refuse registration or exemption from registration may appeal to the Chief Executive in Council within 30 days of the date when notice of the decision was given to the society. The Chief Executive in Council may confirm, vary or reverse the decision. The operation of the decision appealed against is suspended until the Chief Executive in Council has heard and determined the appeal.</p> | The Societies Officer/any Assistant Societies Officer (who shall be the Commissioner of Police). |
| 19 | SOCIETIES ORDINANCE (Cap.151) | <p><u>Section 5E</u> The society, the branch, an office-bearer or a member of the society or the branch who is aggrieved by the decision of the Societies Officer to cancel the registration or exemption from registration may appeal to the Chief Executive in Council within 30 days of the date when notice of the decision was given to the society. The Chief Executive in Council may confirm, vary or reverse the decision. The operation of the decision appealed against is suspended until the Chief Executive in Council has heard and determined the appeal.</p> | The Societies Officer/Any Assistant Societies Offices (who shall be the Commissioner of Police). |

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| 20 | SOCIETIES ORDINANCE (Cap.151) | <p><u>Section 6</u></p> <p>(2) Any person aggrieved by a decision of the Secretary for Home Affairs under subsection (1) may appeal to the Chief Executive in Council and on any such appeal the Chief Executive in Council may confirm, vary or reverse the decision of the Secretary for Home Affairs.</p> <p>(3) An appeal under subsection (2) may be made within 30 days after the date when the decision was notified to the person or the society or the date of publication of the notice of the decision in the Gazette, whichever is the later.</p> <p>(4) The operation of any decision appealed against under subsection (1) shall be suspended until the appeal has been heard and determined by the Chief Executive in Council.</p> | The Secretary for Home Affairs. |
| 21 | SOCIETIES ORDINANCE (Cap.151) | <p><u>Section 8</u></p> <p>(7) A society or a branch in relation to which an order is made under this section and any office-bearer or member of the society or the branch who is aggrieved by an order of the Secretary for Security made under this section may appeal to the Chief Executive in Council against the making of the order within 30 days after the order takes effect and the Chief Executive in Council may confirm, vary or revoke the order.</p> | The Secretary for Security. |
| 22 | SOCIETIES ORDINANCE (Cap.151) | <p><u>Section 24</u></p> <p>(3) A person who is aggrieved by an order made under subsection (1) may appeal to the Chief Executive in Council within 30 days from the date of service of the order on him and the Chief Executive in Council may confirm, vary or revoke the order.</p> | The Secretary for Security. |

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| 23 | SOCIETIES ORDINANCE (Cap.151) | <u>Section 25</u> (3) A person who is aggrieved by an order made under subsection (1) may appeal to the Chief Executive in Council within 30 days from the date of service of the order on him and the Chief Executive in Council may confirm, vary or revoke the order. | The Secretary for Security. |
| 24 | HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION ORDINANCE (Cap. 165) | <u>Section 3</u> (7) (a) Any person registered in respect of a hospital or maternity home who is aggrieved by a condition imposed by the Director under subsection (4) may appeal by way of petition to the Chief Executive in Council. (b) On any such appeal, the Chief Executive in Council may confirm, vary or reverse the decision of the Director. | The Director of Health. |
| 25 | HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION ORDINANCE (Cap. 165) | <u>Section 5</u> (3) Any person aggrieved by an order refusing an application for registration or cancelling any registration may, within 14 days after the date on which the copy of the order was sent to him, appeal against it by way of petition to the Chief Executive in Council. | The Director of Health. |

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| 26 | AERIAL ROPEWAYS (SAFETY) ORDINANCE (Cap. 211) | <p><u>Section 24</u></p> <p>(1) If the person installing an aerial ropeway or the owner of an aerial ropeway is aggrieved by any requirement or direction made, or the withholding of any consent or approval, by the Director under this Ordinance the owner may appeal by petition to the Chief Executive in Council.</p> <p>(2) Save where the Chief Executive in Council otherwise directs, when any such appeal has been made, no such requirement or direction, other than a requirement under section 18 or 19 to close or partially close the aerial ropeway, shall be enforced until the decision of the Chief Executive in Council on the appeal is made.</p> <p>(3) The decision of the Chief Executive in Council on any such appeal shall be final.</p> | The Director of Electrical and Mechanical Services. |
| 27 | PUBLIC BUS SERVICES ORDINANCE (Cap. 230) | <p><u>Section 33</u></p> <p>(1) A grantee which is aggrieved by any decision, direction or requirement of the Secretary for Transport, or a public officer given directions under section 3, or the Commissioner, or any person authorized by him, under this Ordinance or its franchise may, within 28 days of the giving or making of the decision, direction or requirement, appeal by petition to the Chief Executive in Council, and the decision of the Chief Executive in Council on any such appeal shall be final.</p> <p>(2) Where a grantee has appealed under subsection (1), the decision, direction or requirement, as the case may be, shall not have effect until the appeal has been determined, unless the Chief Executive in Council otherwise directs.</p> | The Secretary for Transport, or a public officer given directions under section 3 of Cap. 230, or the Commissioner for Transport, or any person authorised by him. |

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| 28 | PEAK TRAMWAY ORDINANCE (Cap. 265) | <p><u>Section 8</u> If any difference arises between the company and the Secretary for Transport with respect to any interference or control exercised or claimed to be exercised by the company or the Secretary for Transport, by virtue of this Ordinance, in relation to the tramway or any work, or in relation to any work or proceeding of the Secretary for Transport, or with respect to the propriety or the mode of execution of any work relating to the tramway, or on the question whether any work is such as ought to satisfy the Secretary for Transport, or with respect to any other subject or thing regulated by or comprised in this Ordinance, the matter in difference shall (unless otherwise specially provided for by this Ordinance) be settled by the Chief Executive in Council, on the application of either party.</p> | The Secretary for Transport. |
| 29 | MINING ORDINANCE (Cap.285) | <p><u>Section 31</u> (3) Before a lease is revoked under the provisions of subsection (1), the Director of Lands shall give notice in writing of his intention to the lessee or his attorney, specifying the reasons for the proposed revocation, and the lessee or his attorney may, within one month after receipt of such notice, appeal by way of petition to the Chief Executive in Council against the proposed revocation.</p> <p>(4) A petition to the Chief Executive in Council under the provisions of subsection (3) shall be lodged with the Clerk to the Executive Council.</p> <p>(5) On consideration of the petition, the Chief Executive in Council may make such order as he thinks proper and such order shall be final.</p> | The Director of Lands. |

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| 30 | MARINE FISH (MARKETING AND EXPORTATION) REGULATIONS (Cap.291A) | <p><u>Regulation 4F</u> Any person aggrieved by-</p> <p>(a) a decision of the Director on an application for the issue of an export permit;</p> <p>(b) the cancellation of an export permit; or</p> <p>(c) the exercise by a designated officer of any of the powers conferred by regulation 4E,</p> <p>may, within 21 days, or such further period as the Chief Executive may allow in any particular case, appeal by way of petition to the Chief Executive in Council.</p> | The Director of Marketing (who shall be the Director of Agriculture, Fisheries and Conservation). |
| 31 | HONG KONG AIRPORT (CONTROL OF OBSTRUCTIONS) ORDINANCE (Cap.301) | <p><u>Section 10</u> (3) Any person aggrieved by any prohibition imposed [by the Director-General of Civil Aviation] under subsection (1) may appeal by way of petition to the Chief Executive in Council, but shall, pending the decision of such appeal, comply with the notice given pursuant to subsection (1).</p> | The Director-General of Civil Aviation. |
| 32 | POST SECONDARY COLLEGES ORDINANCE (Cap.320) | <p><u>Section 6</u> (4) Where the Director refuses to register or cancels a registration under subsection (1) the Post Secondary College or person concerned may within twenty-one days of the receipt of the notice under subsection (3) appeal by way of petition to the Chief Executive in Council, and the decision of the Chief Executive in Council shall be final.</p> <p>(5) For the purpose of considering a petition and determining the appeal the Chief Executive in Council may appoint a tribunal to inquire into the matters raised in such petition, and may empower such tribunal to hear evidence and do all other such things as are necessary for its due inquiry. Any tribunal so appointed shall conduct its inquiry in private and submit a report in writing to the Chief Executive in Council.</p> | The Director of Education. |

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| | | <p>(6) (a) In addition to the powers of the Director under subsection (1) the Chief Executive in Council may order the Director to refuse to register or to cancel the registration of any Post Secondary College or of any person as a member of a Board of Governors or College Council or as a teacher where it appears to the Chief Executive in Council that the registration or the continued registration of such College or person would be prejudicial to the public interest, to the welfare of students or to education generally.</p> <p>(b) Before making any order under this subsection the Chief Executive in Council shall afford to the Post Secondary College or person concerned the opportunity to submit any representations in writing which shall be considered by the Chief Executive in Council.</p> | |
| 33 | MEDICAL CLINICS ORDINANCE (Cap.343) | <p><u>Section 12</u></p> <p>(1) Any person who is aggrieved by an order [by the Registrar of Clinics] refusing an application for registration or cancelling a registration, or by a refusal to grant or renew an exemption or by a cancellation of an exemption may, within 14 days of such refusal or cancellation or within such further time as the Chief Executive in Council may allow, appeal against it by way of petition to the Chief Executive in Council.</p> | The Registrar of Clinics (who shall be the Director of Health). |

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| 34 | HOTEL ACCOMMODATION TAX ORDINANCE (Cap.348) | <p><u>Section 7</u></p> <p>(1) Any person aggrieved by a decision of the Collector made under or in exercise of the powers vested in him by the proviso to section 5(1) may, within 1 month of the day on which he received notification of such decision, appeal by way of petition to the Chief Executive in Council.</p> <p>(2) Upon any such appeal, the Chief Executive in Council may confirm, reverse or vary the decision of the Collector.</p> | The Collector of Stamp Revenue (who shall be the Commissioner of Inland Revenue). |
| 35 | ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS (Cap.374B) | <p><u>Regulation 45</u></p> <p>If any person is aggrieved by-</p> <p>(a) the refusal of the Commissioner to issue or renew a driving licence or driving instructor's licence; or</p> <p>(b) the cancellation by the Commissioner of a driving licence or driving instructor's licence,</p> <p>he may, after giving the Commissioner notice of his intention so to do, appeal by petition to the Chief Executive in Council and on such appeal the Chief Executive in Council may make such order as he thinks fit and any order so made shall be binding on the Commissioner.</p> | The Commissioner for Transport. |

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| 36 | MASS TRANSIT RAILWAY ORDINANCE (Cap.556) | <p><u>Section 53</u></p> <p>(1) This section applies to any decision of the Secretary or the Commissioner, or any person authorized by either of them, which is made under any provision of this Ordinance other than section 15(5), 19(1), 22, 26 or 33.</p> <p>(2) If the Corporation is aggrieved by any decision to which this section applies the Corporation may, within 28 days after the making of the decision, appeal by petition to the Chief Executive in Council.</p> <p>(3) The decision of the Chief Executive in Council on any appeal under this section is final.</p> <p>(4) Where the Corporation appeals under this section, the decision under appeal shall not have effect until the appeal has been determined, unless the Chief Executive in Council directs otherwise.</p> | The Secretary for Transport, Commissioner for Transport, or any person authorised by either of them. |
| 37 | SECURITIES AND FUTURES COMMISSION ORDINANCE (Cap.24) | <p><u>Section 50</u></p> <p>(3) (a) Where a restriction notice [issued by the Securities and Futures Commission] requires an Exchange Company, clearing house or recognized exchange controller to amend, withdraw or revoke any provision of its memorandum of association or articles of association, the Exchange Company, clearing house or recognized exchange controller may appeal to the Chief Executive in Council against the notice.</p> | The Securities and Futures Commission. |

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| 38 | USE OF ELECTRIC POWER ON THE TRAMWAY RULES (Cap.107C) | <p><u>Rule 14</u> Where in any case in any part of the tramway the line is erected overhead and the return is laid on or under the ground, and where any wires have been erected or laid before the construction of the tramway in the same or nearly the same direction as such part of the tramway, the company shall, if required so to do by the owners of such wires or any of them, permit such owners to insert and maintain in the company's line one or more induction-coils or other apparatus approved by the company for the purpose of preventing disturbance by electric induction. In any case in which the company withholds its approval of any such apparatus the owners may appeal to the Chief Executive in Council, who may, if he thinks fit, dispense with such approval.</p> | The Hong Kong Tramways Limited. |

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| 39 | BANKING ORDINANCE (Cap. 155) | <p><u>Section 53</u></p> <p>(1) Where-</p> <ul style="list-style-type: none"> (a) the Monetary Authority makes a report to the Chief Executive in Council under section 52(1)(D); (b) any person appeals to the Chief Executive in Council under section 132A(1) against a decision of the Monetary Authority under section 52(1)(A), (B) or (C) or (3A); or (c) the Financial Secretary refers a report and his recommendations thereon to the Chief Executive in Council under section 117(5)(c), <p>the Chief Executive in Council may, without prejudice to any of the powers conferred on the Monetary Authority by Part V or VI, exercise one or more of the following powers-</p> <ul style="list-style-type: none"> (i) to confirm, vary or reverse any requirement, appointment or direction made by the Monetary Authority; (iii) to direct the Financial Secretary to present a petition to the Court of First Instance for the winding-up of the authorized institution or former authorized institution by the Court of First Instance. <p>(2) The Chief Executive in Council may, before considering any report or appeal under subsection (1), seek the advice of the Banking Advisory Committee or the Deposit-taking Companies Advisory Committee, or both, but shall not be bound to follow any such advice.</p> | The Hong Kong Monetary Authority. |

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| 40 | BANKING ORDINANCE (Cap. 155) | <p><u>Section 132A</u></p> <p>(1) Any person (howsoever described) aggrieved by-</p> <ul style="list-style-type: none"> (a) a decision of the Monetary Authority under section 16(1)(b) or (3A)(b), 25(1) or (2), 44(5), 46(5), 49(5), 51A(5), 52(1)(A), (B) or (C) or (3A), 53G(7), 87A(5) or 118C(1)(b); (b) the attachment by the Monetary Authority of any conditions to the person's authorization under section 16(1)(a), (3A)(a) or (5) or to the person's certificate of approval under section 118C(1)(a) or (4); (c) any conditions referred to in section 18(4)(c) or (5), 22(4)(c) or (5), 24(5)(c) or (6) or 25(3)(c) or (4) attached to a consent given to the person pursuant to section 18(4), 22(4), 24(5) or 25(3), as the case may be; (d) the refusal by the Monetary Authority to grant approval under section 44(1), 46(1), 49(1), 51A(2), 69(1) or 87A(2)(a); | The Hong Kong Monetary Authority. |

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| | | <p>(e) any conditions to which an approval under section 44(1), 46(1), 49(1), 51A(2) or 87A(2)(a) is made subject by the Monetary Authority under section 44(4), 46(4), 49(4), 51A(4) or 87A(4), as the case may be;</p> <p>(f) a refusal to grant consent under section 71(1) or 73(1) or (1A), conditions attached to a consent under section 71(1), the withdrawal of consent under section 71(3) or the amendment under section 71(3) of conditions attached to a consent;</p> <p>(g) a requirement in a notice under section 100(2) or 104(2) served on the person;</p> <p>(h) a variation of the capital adequacy ratio or liquidity ratio contained in a notice under section 101(1) or 105(1), as the case may be, served on the person,</p> <p>may appeal to the Chief Executive in Council against the decision, conditions, refusal, withdrawal, requirement or variation, but that decision or those conditions, or that refusal, withdrawal, requirement or variation, as the case may be, shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.</p> <p>(2) Any authorized institution aggrieved by the proposed revocation of its authorization under section 22(1) may appeal to the Chief Executive in Council against the proposed revocation.</p> | |

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| | | <p>(3) Any person aggrieved by a decision of the Monetary Authority to serve-</p> <p>(a) a conditional notice of consent or notice of objection (within the meaning of section 70) on him;</p> <p>(b) a notice of objection (within the meaning of section 70A) on him,</p> <p>may appeal to the Chief Executive in Council against the decision, but that decision shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.</p> <p>(5) Any approved money broker aggrieved by the proposed revocation of its approval under section 118D(1) may appeal to the Chief Executive in Council against the proposed revocation.</p> | |

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| 41 | COUNTRY PARKS ORDINANCE (Cap. 208) | <p><u>Section 17</u></p> <p>(8) Any objector aggrieved by the Board's decision may appeal by way of petition to the Chief Executive within 1 month of being notified of the Board's decision.</p> <p>(9) Upon consideration of a petition under subsection (8) the Chief Executive may-</p> <ul style="list-style-type: none"> (a) direct the Land Authority to withdraw or amend the notice served under section 16(2); or (b) direct that the petition be referred to the Chief Executive in Council. <p>(10) The Chief Executive in Council, upon considering a petition referred to him under subsection (9) may-</p> <ul style="list-style-type: none"> (a) direct the Land Authority to withdraw or amend the notice served under section 16(2); or (b) dismiss the petition. <p>(11) The decision of the Chief Executive or the Chief Executive in Council shall be final.</p> | The Country and Marine Parks Board. |

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| 42 | COMMODITIES TRADING ORDINANCE (Cap. 250) | <p><u>Section 25</u> Where-</p> <p>(a) a licence is revoked under section 18 or 20; or</p> <p>(b) the Exchange Company is directed to close the Commodity Exchange under 19 or 20,</p> <p>the Exchange Company may appeal to the Chief Executive in Council against decision of the Commission, and the Chief Executive in Council may confirm, vary or reverse the decision and give such other directions as it thinks just and equitable.</p> | The Securities and Futures Commission. |
| 43 | EDUCATION ORDINANCE (Cap.279) | <p><u>Section 65</u> The Director or the appellant may within 14 days after being served under section 64(2) with a notice of the decision of the Appeals Board appeal by way of petition to the Chief Executive in Council.</p> | The Appeals Board appointed under section 59 of the Ordinance. |

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| 44 | EDUCATION ORDINANCE (Cap.279) | <p><u>Section 66</u> (2) Any permission given by the Director under subsection (1) shall remain in force-</p> <ul style="list-style-type: none"> (a) until- <ul style="list-style-type: none"> (i) the expiry of the time specified in section 61(1) for the bringing of an appeal to the Appeals Board against the decision of the Director; and (ii) the determination of any appeal brought under section 61 to the Appeals Board against the decision of the Director; and (b) if an appeal is brought under section 61 to the Appeals Board against the decision of the Director, until- <ul style="list-style-type: none"> (i) the expiry of the time specified in section 65 for the bringing of a further appeal to the Chief Executive in Council against the decision of the Appeals Board; and (ii) the determination of any further appeal brought under section 65 to the Chief Executive in Council against the decision of the Appeals Board; and (c) in special circumstances, until such later date as the Director may specify. | The Appeals Board appointed under section 59 of the Ordinance. |
| 45 | MARINE FISH (MARKETING) BY-LAWS (Cap.291B) | <p><u>By-law 23</u> (5) If any person is dissatisfied with the determination of the Organization under this by-law, he may within fourteen days after notification by the Organization of its determination appeal to the Chief Executive in Council by way of petition, and the decision of the Chief Executive in Council shall be final.</p> | The Fish Marketing Organisation. |

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| 46 | SECURITIES ORDINANCE (Cap.333) | <p><u>Section 29</u></p> <p>(1) Where the Commission has issued a direction under section 26(1), the Exchange Company (or, if a recognized exchange controller is the controller of the Exchange Company, that recognized exchange controller) may, within 14 days after the publication in the Gazette of notice of the direction, appeal to the Chief Executive in Council against the direction of the Commission but the decision of the Commission shall take effect notwithstanding the fact that an appeal has been made.</p> <p>(2) After considering any appeal under subsection (1) the Chief Executive in Council may confirm, reverse or vary the direction of the Commission and the decision of the Chief Executive in Council shall be final.</p> | The Securities and Futures Commission. |
| 47 | STOCK EXCHANGES UNIFICATION ORDINANCE (Cap.361) | <p><u>Section 37</u></p> <p>(1) Where the Commission withdraws its recognition under section 36, the Exchange Company may, within 14 days after the publication in the Gazette of the notice of withdrawal, appeal to the Chief Executive in Council against the withdrawal.</p> <p>(2) After considering any appeal under subsection (1), the Chief Executive in Council may confirm, reverse or vary the decision of the Commission; and the decision of the Chief Executive in Council shall be final.</p> | The Securities and Futures Commission. |

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| 48 | BROADCASTING AUTHORITY ORDINANCE (Cap.391) | <p><u>Section 26</u></p> <p>(1) A licensee aggrieved by-</p> <p>(a) any decision of the Authority in the exercise of any discretion vested in it under the licence, this Ordinance, Part IIIA of the Telecommunications Ordinance (Cap 106) or any regulation made thereunder; or</p> <p>(b) anything contained in any Code of Practice or direction issued by the Authority,</p> <p>may within 30 days of the notification to him of the decision or direction of the Authority or within 30 days of the date of issue of the Code of Practice, as the case may be, appeal by way of petition to the Chief Executive in Council.</p> <p>(2) Except in the case of the suspension of a licence under any provision of the licence, an appeal made under this section shall not affect the operation of the decision, direction or Code of Practice appealed against prior to the determination of the appeal.</p> <p>(3) The Chief Executive in Council may determine an appeal lodged under this section by confirming, varying or reversing any decision, or direction of the Authority or by amending any Code of Practice to the extent that it is inconsistent with the determination.</p> | The Broadcasting Authority. |

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| 49 | EXCHANGES AND CLEARING HOUSES (MERGER) ORDINANCE (Cap. 555) | <p><u>Section 3</u></p> <p>(6) Where a person is the controller of an Exchange Company or clearing house in contravention of subsection (1) (and whether or not the person is charged with an offence under subsection (4) in relation to the contravention), the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice-</p> <ul style="list-style-type: none"> (a) for the purpose of causing the person to cease to be such controller; and (b) within such period as is specified in the notice for the purpose. <p>(10) A person served with a notice under subsection (6) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.</p> | The Securities and Futures Commission. |

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| 50 | Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) | <p><u>Section 4</u></p> <p>(1) Subject to subsection (2), where the Commission is satisfied that it is appropriate to do so-</p> <ul style="list-style-type: none"> (a) in the interest of the investing public or in the public interest; or (b) for the proper regulation of markets in securities or futures contracts, it may, with the consent in writing of the Financial Secretary, by notice in writing served on a recognized exchange controller stating the reasons in support of the ground or grounds for the notice- <ul style="list-style-type: none"> (i) withdraw the company's recognition as an exchange controller with effect from a date specified in the notice for the purpose; (ii) if the company is the controller of an Exchange Company or clearing house, direct the company to take such steps as are specified in the notice- <ul style="list-style-type: none"> (A) for the purpose of causing the company to cease to be such controller; and (B) within such period as is specified in the notice for the purpose. <p>(6) A company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.</p> | The Securities and Futures Commission. |

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| 51 | EXCHANGES AND CLEARING HOUSES (MERGER) ORDINANCE (Cap. 555) | <p><u>Section 6</u></p> <p>(7) Where a person has contravened subsection (2) or failed to comply with a condition specified in an approval under that subsection (and whether or not the person is charged with an offence under subsection (5) in relation to the contravention or failure), the Commission may, by notice in writing served on the person, direct the person to take such steps as are specified in the notice-</p> <ul style="list-style-type: none"> (a) for the purpose of causing the person to cease to be a minority controller of the recognized exchange controller, Exchange Company or clearing house the subject of that contravention or failure; and (b) within such period as is specified in the notice for the purpose. <p>(11) A person served with a notice under subsection (7) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice.</p> | The Securities and Futures Commission. |

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| 52 | EXCHANGES AND CLEARING HOUSES (MERGER) ORDINANCE (Cap. 555) | <p><u>Section 14</u></p> <p>(1) Where the Commission is satisfied that-</p> <p>(a) a conflict of interest exists or may come into existence between-</p> <p>(i) the interest of a recognized exchange controller or a company of which the recognized exchange controller is the controller ("relevant company"); and</p> <p>(ii) the interest of the proper performance of the functions conferred by this Ordinance or any other enactment (including any rules made under any enactment, whether or not they are subsidiary legislation) on the controller or the relevant company; or</p> <p>(b) such a conflict of interest has existed in circumstances that make it likely that the conflict of interest will continue or be repeated,</p> | The Securities and Futures Commission. |

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| | | <p>then the Commission may by notice in writing served on the controller or relevant company, as the case may be, stating the reason or reasons in support of the ground or grounds for the notice, direct the controller or relevant company, as the case may be, to forthwith take such steps as are specified in the notice (including steps in relation to any of its affairs, business and property whatsoever) for the purposes of remedying the conflict of interest or the matters occasioning the conflict of interest, as the case may be.</p> <p>(2) A recognized exchange controller or relevant company served with a notice under subsection (1) may appeal against the notice to the Chief Executive in Council not later than 14 days after the date of service of the notice or such longer period, if any, as the Commission specifies in the notice, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.</p> | |

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| 53 | BROADCASTING ORDINANCE (Cap. 562) | <p><u>Section 34</u></p> <p>(1) Subject to the provisions of this section, a licensee (including a person seeking to be a licensee) aggrieved by-</p> <ul style="list-style-type: none"> (a) a decision of- <ul style="list-style-type: none"> (i) the Broadcasting Authority in the exercise of a discretion conferred on it under this Ordinance or the Broadcasting Authority Ordinance (Cap 391) (including a decision to specify a condition in a licence); or (ii) the Telecommunications Authority in the exercise of a discretion conferred on him under this Ordinance; (b) anything contained in a direction, order, or determination, under this Ordinance; or (c) anything contained in a Code of Practice, <p>may appeal by way of petition to the Chief Executive in Council, not later than 30 days beginning on the date of the relevant decision, the issue or making of the direction, order, or determination, or the publication of the Code of Practice, as the case may be.</p> | The Broadcasting Authority or the Telecommunications Authority. |