

THE OMBUDSMAN (AMENDMENT) ORDINANCE 2001

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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 30 OF 2001**A circular stamp containing the letters "L.S." in a serif font.

TUNG Chee-hwa
Chief Executive
6 December 2001

An Ordinance to amend The Ombudsman Ordinance, to make a related amendment to the Prevention of Bribery Ordinance, and to provide for related matters.

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Enacted by the Legislative Council.

PART I**PRELIMINARY****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.

PART II**AMENDMENTS TO THE OMBUDSMAN ORDINANCE****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(1)”.

3. Appointment and tenure of office

Section 3 is amended—

(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.”;

(b) in subsections (5) and (6), by adding “the person appointed to be” before “the Ombudsman”;

(c) 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) by repealing subsection (2) and substituting—

“(2) All provisions, except section 3(3), (3A) and (4), of this Ordinance that apply to the person appointed to be the Ombudsman shall apply to the person appointed to act as the Ombudsman.”.

6. Staff of Ombudsman

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

7. Sections added

The following are added in Part II—

“6A. Advisers

The Ombudsman may from time to time appoint such technical or professional 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.”.

8. Part heading amended

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

9. 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 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.”.

10. 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.”.

11. 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 decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or only minor, maladministration.

(2) The Ombudsman may authorize any person appointed under section 6(1) as a mediator in any mediation.

(3) The person appointed to be the Ombudsman under section 3(3) shall not participate 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) 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.”.

12. Evidence

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

13. Ombudsman and his staff to maintain secrecy

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

14. 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.

15. Privilege

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

16. 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.”.

17. Annual report

Section 22 is repealed.

18. Power to amend Schedules

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

19. Organizations to which this Ordinance applies

Part I of Schedule 1 is amended by adding—
“Equal Opportunities Commission.
Privacy Commissioner for Personal Data.”.

20. 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.”.

PART III

SAVINGS AND TRANSITIONAL PROVISIONS

21. 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) that is in force immediately before the appointed day.

22. 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.

23. 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 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 contract as from that day by substituting the new Ombudsman for the former Ombudsman 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.

PART IV

RELATED AMENDMENTS TO PREVENTION OF BRIBERY ORDINANCE

24. Public bodies

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

“98. The Ombudsman.”.