

## A BILL

To

Provide for the incorporation of the Hong Kong Press Council and the establishment of a complaint mechanism against certain conduct of the press and ancillary matters thereto.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Hong Kong Press Council Ordinance.
- (2) Subject to subsection (3), this Ordinance shall come into operation at the beginning of the day on which this Ordinance is published in the Gazette.
- (3) Section 13(1)(c) shall come into operation on a date to be appointed by the Council by notice in the Gazette.

**2. Interpretation**

In this Ordinance, unless the context otherwise requires –

“Chairman” means the person referred to as Chairman of the Council in section 7 and any person acting as Chairman in accordance with the provisions of the Constitution;

“Code of Conduct” means the Code of Conduct referred to in section 12 as amended from time to time;

“Constitution” means the Constitution of the Council referred to in section 11 for the time being;

“Council” means the Hong Kong Press Council incorporated by section 3;

“Director General” means the Director General of the Council appointed by the Council under section 10 for the time being;

“Executive Committee” means the Executive Committee of the Council established under section 7;

“newspaper” means a local newspaper registered under the Registration of Local Newspapers Ordinance, Cap 268;

"press member" means any member of the Council which is a daily newspaper, which is registered under the Registration of Local Newspapers Ordinance and published in Hong Kong daily, any news agency which is registered under the Registration of Local Newspapers Ordinance, and any professional journalist organization which is registered in Hong Kong;

"public member" means public member as defined in section 9 hereto;

"publish" includes publication by electronic means.

## PART II

### THE HONG KONG PRESS COUNCIL

#### **3. Incorporation of the Hong Kong Press Council**

- (1) The Hong Kong Press Council shall be a body corporate and shall be known as “The Hong Kong Press Council” which shall in that name have perpetual succession and shall be capable of suing and being sued and, subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.
- (2) The Council shall have a common seal which shall not be affixed except pursuant to a resolution of the Council, and unless provided otherwise in the Constitution, in the presence of a member of the Council and of the Chairman, or such other person appointed in his place by the Council, each of whom shall sign his name.
- (3) Any document purporting to be duly executed under the common seal of the Council authenticated in accordance with subsection (2) shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

#### **4. Objects of the Council**

The objects of the Council are-

- (a) to uphold and defend freedom of the press, including but not

restricting to publishing reports and making representation to the Government or otherwise on any matter concerning the freedom of the press;

- (b) to promote and uphold the highest professional and ethical standards of the newspaper industry, both within the industry and in the community generally by promoting media education or otherwise;
- (c) to consider, investigate and determine any complaint made by the public or by any newspaper against the conduct of a newspaper in Hong Kong and to act appropriately upon such determination; and
- (d) to do all such other things as are incidental or conducive to the attainment of the above objects.

## **5. Powers of the Council**

Subject to this Ordinance, the Executive Committee may, on behalf of the Council, do all such things as are necessary for, or incidental or conducive to the better carrying out of the objects of the Council, and, in particular, but without prejudice to the generality of the foregoing, may –

- (a) hold or assist in holding exhibitions, competitions and organize lectures, seminars and training courses;
- (b) print, publish and sell reports, periodicals, books or leaflets;
- (c) apply for, invite and collect from members of the Council or from any other persons, corporations or authorities, subscriptions, donations, gifts, bequests and any other assistance;
- (d) acquire by purchase, gift or otherwise, take on lease, purchase, hold and enjoy any real or personal property whether subject to any special trust or not;
- (e) sell, let, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with all or any part of the property, assets, rights and privileges of the Council;
- (f) undertake and execute any trusts which may lawfully be undertaken by the Council;
- (g) borrow or raise money for the purposes of the Council in such manner and on such securities or terms as may be thought fit;
- (h) invest the moneys of the Council not immediately required for its purposes in or upon such investments, securities or property as may be thought fit;
- (i) lend money to such persons, companies or associations on such terms as may seem expedient;

- (j) employ and remunerate and, from time to time if thought fit, dismiss and replace with others such employees and staff as the Council may think fit, and lawyers, accountants, surveyors and other professional or non-professional advisers or consultants as may be considered expedient;
- (k) draw, make, accept, endorse, discount, execute and issue promissory notes, cheques, bills of exchange and other negotiable or transferable instruments;
- (l) obtain any enactment or order for enabling the Council to carry any of its objects into effect or for effecting any modification of the Council's constitution or for any other purpose which may seem expedient;
- (m) invest any real or personal property, rights or interest acquired or belonging to the Council in such manner and to such extent as the Council thinks appropriate or expedient;
- (n) establish and support or aid in the establishment and support of any associations or institutions as the Council thinks fit and to subscribe or guarantee the payment of moneys which may seem directly or indirectly calculated to benefit the Council;
- (o) procure the Council to be registered or recognized in any part of the world;
- (p) co-operate with any local or public authority or other body;
- (q) support or oppose any proceedings or applications which may seem calculated directly or indirectly to benefit or prejudice the Council's interest;
- (r) apply for and receive any grant in aid for the functions of the Council on such conditions as the Executive Committee deems appropriate or expedient;
- (s) enter into any contract;
- (t) form any committee or subcommittee for furtherance of the objects of the Council as the Executive Committee thinks appropriate or expedient;
- (u) make, amend and promulgate the Code of Conduct and other rules and practices on the professional and ethical standards of the newspaper industry; and
- (v) consider, investigate and deal with any complaints about the conduct of any newspaper under Part VI of this Ordinance.

**6. Vesting of Property**

On the commencement of this Ordinance, the Council shall succeed to all property, rights, privileges, obligations and liabilities of the Hong Kong Press Council Limited.

PART III

EXECUTIVE COMMITTEE

**7. Establishment of the Executive Committee**

- (1) There is hereby established an Executive Committee to be known as the Executive Committee of the Hong Kong Press Council.
- (2) The Executive Committee shall comprise no less than 15 and no more than 25 members, including the Chairman, Vice-Chairman and the Director General of the Council, to be elected by the general meeting of the Council. There shall be a majority of public members on the Executive Committee. No more than 2 members on the Executive Committee shall belong to the same newspaper group. The Chairman and the Vice-Chairman shall be a public member, and the Director General is deemed to be a press member.
- (3) At the commencement of this Ordinance, the Executive Committee shall consist of the persons holding the offices of the Chairman, Vice-Chairman and the Director General of the Hong Kong Press Council Limited immediately before the commencement of this Ordinance, and all other persons who were members of the Executive Committee of the Hong Kong Press Council Limited immediately before the commencement of this Ordinance.
- (4) The persons specified in subsection (3) shall hold office until the election of officers and members of the Executive Committee at the first annual general meeting of the Hong Kong Press Council or otherwise in accordance with the provisions of the Constitution.

**8. Powers of the Executive Committee**

The management of the Council shall be vested in the Executive Committee and all the powers of the Council shall be vested in and exercisable by the Executive Committee except so far as this Ordinance or the Constitution otherwise requires.

## PART IV

### MEMBERSHIP AND CONSTITUTION

#### **9. Membership**

- (1) The Council shall be composed as follows -
  - (a) press members;
  - (b) public members; and
  - (c) other categories of members, who shall have no voting right in the General Meeting of the Council, as may from time to time created in accordance with the Constitution.
- (2) The press members and the public members shall be the only voting members of the Council. The public members shall form a majority of all voting members in the Council, provided that the number of public members in excess of the press members shall not exceed 30% of that of the press members at any time.
- (3) No public member of the Council shall be public officer holding an office of emolument under the Government, whether such office be permanent or temporary.
- (4) Subject to subsection (6), no person shall be admitted or appointed as a member of the Council except in pursuance of a resolution of the Executive Committee. Any candidate who is proposed to be admitted as a public member shall be nominated by at least two press members.
- (5) Any daily or weekly newspaper which is registered under the Registration of Local Newspapers Ordinance and published in Hong Kong daily or weekly, any news agency which is registered under the Registration of Local Newspapers Ordinance, and any professional journalist organization which is registered in Hong Kong, are eligible to be the press members of the Council. The Executive Committee shall provide written reasons if it decides not to admit an eligible person to be a press member. Any person who is refused admission to be a press member by the Executive Committee under this subsection may request the Council to review the decision of the Executive Committee. The Council may confirm, vary or reverse the decision of the Executive Committee.
- (6) Subject to the provisions of this section, all public members shall be appointed by resolution by the Executive Committee and for such

terms as may be decided by the Executive Council. The public members shall be broadly representative and shall include –

- (i) 2 members who shall be legally qualified;
- (ii) 1 member who shall be a registered social worker;
- (iii) 1 member who shall be a registered teacher; and
- (iv) 1 member who shall be an academic teaching in one of the tertiary institutions in Hong Kong.

- (7) At the commencement of this Ordinance, all persons who were members of the Hong Kong Press Council Limited immediately before the commencement of this Ordinance shall become either press members or public members of the Council.
- (8) The Council may, by no less than three quarters of all its members present and entitled to vote in a general meeting, expel any member of the Council, provided that the Council shall not exercise such power unless there is a recommendation of expulsion from the Executive Committee, such recommendation being supported by no less than three quarters of all members of the Executive Council.

**10. Director General**

The Council may from time to time appoint a Director General to be the chief executive of the Council, and such Deputy Directors and Assistant Deputy Directors as may be appropriate to the proper and efficient functioning of the Council.

**11. Existing Articles of Association and Byelaws to become Constitution of the Council**

- (1) Subject to the provision of this Ordinance, the Articles of Association, with the exception of the section on membership, and the Byelaws of the Hong Kong Press Council Limited at the commencement of this Ordinance shall be adopted as the constitution of the Council.
- (2) Within 21 days after the commencement of this Ordinance, the Director General shall deliver to the Registrar of Companies for registration a copy of the Constitution adopted under subsection (1), certified by the Chairman as being a true copy.
- (3) The Council may by not less than three quarters of all its members present and entitled to vote in a general meeting amend the Constitution at any time in accordance with the provisions of the Constitution.

- (4) It shall not be necessary to publish the Constitution or any amendment thereof in the Gazette.

## PART V

### CODE OF CONDUCT

#### **12. Code of Conduct**

- (1) All newspapers in Hong Kong shall use their best endeavours to comply with and to refrain from doing an act, or engaging in a practice that contravenes the provision of the Code of Conduct.
- (2) For the purpose of this section, an act includes an omission, and an act or practice of a newspaper includes an act or practice of its proprietor, editor, employee, contributor and freelance writer.
- (3) The Code of Conduct shall be promulgated by the Council and may be amended by not less than three quarters of all its Press Members present and entitled to vote in a general meeting in accordance with the procedure laid down in the Constitution.
- (4) Subject to any amendment made under subsection (3), the Code of Conduct as adopted by the Hong Kong Press Council Limited at the commencement of this Ordinance shall be deemed to be the Code of Conduct promulgated by the Council under subsection (3).
- (5) It shall not be necessary to publish the Code of Conduct or any of its amendment in the Gazette.

## PART VI

### COMPLAINTS, INVESTIGATION AND DISCIPLINE

#### **13. Complaint about the Conduct of a Newspaper**

- (1) The Council may, on its own motion or upon a complaint made by any person, organization, corporate or otherwise, or the authorized representative of a minor, or a newspaper, against any newspaper in Hong Kong, its editor, employee, contributor or freelance writer, which alleges –
- (a) an infringement of privacy of a person;
  - (b) the pandering to prurience, indecency, and sensationalism in the publication of a news article or article involving



violence, sex-related crime or suicide; or

(c) any other breach of the Code of Conduct,

set up a screening committee in accordance with the provision of the Constitution to consider whether there is a prima facie case against the respondent newspaper.

- (2) The Council may decline to investigate a complaint made under subsection (1) if the complainant is not resident in Hong Kong or if the alleged infringement of privacy is not related to the privacy of the complainant or if the subject matter of the complainant is or can be adequately dealt with elsewhere.
- (3) The Council may dismiss or otherwise dispose of a complaint made under subsection (1) if the complaint is of a trivial nature, frivolous or vexatious or has been appropriately remedied or satisfactorily resolved.
- (4) If the screening committee decides to reject the complaint, it shall forward its reasoned decision to the Council. If the Council decides to uphold the decision, it shall dismiss the complaint and inform the complainant accordingly with the reasons therefore.
- (5) If the screening committee decides that there is a prima facie case of complaint, it shall forward its decision to the Council which shall then refer the complaint to a Complaint Committee in accordance with the provision of the Constitution to investigate the complaint.
- (6) The Complaint Committee shall conduct an inquiry into the complaint referred to it under subsection (4) substantially in accordance with the procedures prescribed by the Constitution and shall make its finding and recommendations to the Council after due inquiry.
- (7) Upon receipt of the report of the Complaint Committee made under subsection (5), if the Council is satisfied that the conduct of the respondent newspaper constitutes an infringement of privacy of a person or the pandering to prurience, indecency, and sensationalism in the publication of a news article or article involving violence, sex-related crime or suicide; or any other breach of the Code of Conduct, it may –
  - (a) censure the respondent newspaper and require the respondent newspaper to publish the censure;
  - (b) require the respondent newspaper to publish an apology and any correction, if appropriate, in such manner and form as the Council may think appropriate;

- (c) publish or cause to be published the censure, including the identity of the respondent newspaper; and
  - (d) publish the full report of the Complaint Committee.
- (8) The Council shall have no power to impose any fine, compensation or cost.
- (9) For the purpose of the inquiry, the Council may admit or exclude the public or any member of the public and the press from all or part of the inquiry.
- (10) The Council shall determine the composition of the screening committee and the Complaint Committee and may appoint persons who are not members of the Council to each of these committees.
- (11) No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made-
  - (a) by the Council; or
  - (b) by any committee of the Council,acting in good faith in the course of the operations of the Council or of the committee. The protection hereby conferred on members and employees of the Council or of a committee in respect of any act or default shall not in any way affect any liability of the Council for that act or default.
- (12) For the avoidance of doubt, the power of the Council under this section may be exercised by the Executive Committee on its behalf.

**14. Appeal**

- (1) Any newspaper which is censored by the Council under this Part and any newspaper which is aggrieved by any final order of the Council under this Part may appeal to the Court of Appeal and the Court of Appeal may thereupon affirm, reverse or vary the order appealed against.
- (2) The decision of the Court of Appeal upon such appeal shall be final.
- (3) The practice in relation to any such appeal shall be subject to any rules of court made under the High Court Ordinance (Cap 4).
- (4) In deciding any appeal under this section, the Court of Appeal may make such order for payment of costs on appeal as it considers reasonable.

**15. Qualified Privilege**

- (1) Without prejudice to the generality of section 14 of the Defamation

Ordinance (Cap. 21), the publication or the broadcasting of any finding or decision of the Council made under this Part shall be privileged unless the publication is proved to be made with malice.

- (2) In an action for libel in respect of the publication of any such report or matter as is mentioned in subsection (1), the provision of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the manner in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.
- (3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

## PART VI

### GENERAL PROVISIONS

#### **16. Particulars to be delivered to the Registrar of Companies**

- (1) Within 21 days after the commencement of this Ordinance the Director General shall deliver to the Registrar of Companies for registration –
  - (a) notice of the address of the Council;
  - (b) a list containing the names and addresses of the members of the Council; and
  - (c) the name and address of the Director General.
- (2) Within 21 days after the Constitution has been amended at any time under section 10, the Director General shall deliver to the Registrar of Companies for registration a copy of the Constitution as amended, certified by the Chairman as being a true copy.
- (3) Within 21 days following any change in any of the particulars required by subsection 1(a), (b) or (c) to be delivered to the Registrar of Companies, the Director General shall deliver notice of change to the Registrar of Companies for registration.
- (4) Not later than 6 months after the end of each year a statement of income and expenditure during that year and of the assets and liabilities of the Council on the last day of that year prepared in

accordance with the Constitution, and the report of the auditors thereon made under the Constitution shall be delivered by the Director General to the Registrar of Companies for registration.

- (5) Any person may inspect any of the documents registered under this section upon payment of such fees as may be prescribed under section 304 of the Companies Ordinance (Cap. 32) for the inspection of a document under section 305.
- (6) The Council shall pay such fees for registering any document under this Ordinance as may be specified in the Eighth Schedule to the Companies Ordinance (Cap.32) as if the Council were a company not having a share capital.

**17. Saving**

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws or the rights of any body politic or corporate or of any other persons except such as are mentioned or referred to in this Ordinance and those claiming by, through, from or under them.

*Explanatory Memorandum*

[to be drafted in due course]