

第 397 章

申訴專員條例

目錄

條次

第 I 部

導言

1. 簡稱
2. 釋義

第 II 部

申訴專員的委任

3. 委任及任期
4. 專員不得擔任其他職位
5. 臨時空缺的填補
6. 專員的職員
- 6A. 顧問
- 6B. 不得視專員為政府的僱員或代理人

第 III 部

專員的職能及權力

7. 專員的職能及權力
8. 不受調查的行動
9. 有關專員權能問題的斷定
- 9A. 費用

第 IV 部

申訴

10. 調查申訴的限制
11. 專員可展開或繼續調查已撤回的申訴
- 11A. 初步查訊
- 11B. 以調解方式處理申訴

CHAPTER 397

THE OMBUDSMAN ORDINANCE

CONTENTS

Section

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

APPOINTMENT OF THE OMBUDSMAN

3. Appointment and tenure of office
4. Ombudsman to hold no other office
5. Filling of temporary vacancy
6. Staff of Ombudsman
- 6A. Advisers
- 6B. Ombudsman not to be regarded as servant or agent of Government

PART III

FUNCTIONS AND POWERS OF THE OMBUDSMAN

7. Functions and powers of Ombudsman
8. Actions not subject to investigation
9. Determination of questions relating to Ombudsman's authority
- 9A. Fees

PART IV

COMPLAINTS

10. Restrictions on investigation of complaints
11. Ombudsman may undertake or continue investigation notwithstanding withdrawal of complaint
- 11A. Preliminary inquiries
- 11B. Dealing with complaints by mediation

條次

第 V 部
處事程序

- 12. 專員的處事程序
- 13. 證據
- 14. 保護證人等
- 15. 專員及其職員須保密
- 16. 專員的報告
- 16A. 公布報告
- 17. 須獲通知調查結果的人

第 VI 部
補充條文

- 18. 特權
- 18A. 豁免權
- 19. 機構的首長的職責
- 20. 進入處所的權力
- 21. 專員權力及職責的轉授
- 22. (廢除)
- 23. 罪行
- 24. 修訂附表的權力
- 25. 過渡性條文

- 附表 1 本條例適用的機構
- 附表 1A 專員的財務事宜等
- 附表 2 不受調查的行動

Section

PART V
PROCEEDINGS

- 12. Proceedings of Ombudsman
- 13. Evidence
- 14. Protection of witnesses, etc.
- 15. Ombudsman and his staff to maintain secrecy
- 16. Reports by Ombudsman
- 16A. Publication of reports
- 17. Persons to be informed of result of investigation

PART VI
SUPPLEMENTARY

- 18. Privilege
- 18A. Immunity
- 19. Duty of head of organization
- 20. Power of entry on premises
- 21. Delegation of powers and duties of the Ombudsman
- 22. (Repealed)
- 23. Offences
- 24. Power to amend Schedules
- 25. Transitional

- Schedule 1 Organizations to which this Ordinance applies
- Schedule 1A Finances, etc. of Ombudsman
- Schedule 2 Actions not subject to investigation

第 397 章

CHAPTER 397

申訴專員條例

THE OMBUDSMAN

本條例旨在委任一位專員就任何申訴或主動對政府或公共主管當局在行政上所採取的行動進行調查，並就專員的權力與職能以及相關事宜訂定條文。

(由 1994 年第 44 號第 2 條修訂)

To make provision for the appointment, powers and functions of an Ombudsman to investigate, whether upon complaint or of his own motion, administrative actions taken on behalf of the Government or public authorities, and for purposes connected therewith.

(Amended 44 of 1994 s. 2; 74 of 1996 s. 2)

[1989 年 2 月 1 日] 1989 年第 27 號法律公告

[1 February 1989] L.N. 27 of 1989

註：《2001 年申訴專員 (修訂) 條例》(2001 年第 30 號) 的保留及過渡條文見載於該條例第 III 部 (第 21 至 23 條)。

Note: For savings and transitional provisions in The Ombudsman (Amendment) Ordinance 2001 (30 of 2001), see Part III (sections 21 to 23) of that Ordinance.

第 I 部

PART I

導言

PRELIMINARY

1. 簡稱

本條例可引稱為《申訴專員條例》(有關文字因已失時效而略去)。

1. Short title

This Ordinance may be cited as The Ombudsman Ordinance (*words omitted as spent*).

(Amended 74 of 1996 s. 3)

2. 釋義

(1) 在本條例中，除文意另有所指外——

“人員”(officer) 包括僱員；

“行政失當”(maladministration) 指行政欠效率、拙劣或不妥善，並在無損此解釋的一般性的情況下，包括——

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“action”(行動) includes omission, recommendation or decision;

“head”(首長) in relation to—

(a) an organization other than the Government Secretariat means the head, director or equivalent officer of the organization;

- (a) 不合理的行為，包括拖延、無禮及不為受行動影響的人着想的行為；
- (b) 濫用權力（包括酌情決定權）或權能，包括作出下述行動——
 - (i) 不合理、不公平、欺壓、歧視或不當地偏頗的行動，或按照屬於或可能屬於不合理、不公平、欺壓、歧視或不當地偏頗的慣例而作出的行動；或
 - (ii) 完全或部分基於法律上或事實上的錯誤而作出的行動；或
- (c) 不合理、不公平、欺壓、歧視或不當地偏頗的程序；

“行動”(action) 包括不作為、建議或決定；

“首長”(head)——

- (a) 就政府總部以外的任何機構而言，指該機構的首長、署長、處長或職位相等的人員；（由 1998 年第 25 號第 2 條修訂）
- (b) 就政府總部而言，指其轄下各組別的首長，而申訴所針對的行動，正是向該首長負責的人員所作出的；（由 1994 年第 44 號第 3 條代替。由 1998 年第 25 號第 2 條修訂；由 2002 年第 23 號第 126 條修訂）

“專員”(Ombudsman) 指第 3(1) 條提述的申訴專員；（由 1996 年第 74 號第 4 條修訂；由 2001 年第 30 號第 2 條修訂）

“調查”(investigation) 指專員根據本條例所作的調查；

“機構”(organization) 指附表 1 所指明的機構。（由 1994 年第 44 號第 3 條代替）

(2) 在本條例中，任何對某機構的提述，均包括對該機構的人員的提述。（由 1994 年第 44 號第 3 條修訂）

第 II 部

申訴專員的委任

3. 委任及任期

(1) 為本條例的施行，須設一個名為“申訴專員”的單一法團。（由 2001 年第 30 號第 3 條代替）

(2) 專員屬永久延續，並——

- (a) 可以該法團名稱起訴和被起訴；及
- (b) 須備有正式印章。（由 2001 年第 30 號第 3 條代替）

(b) the Government Secretariat means the head of a subdivision thereof to whom the officer whose action is the subject of the relevant complaint is responsible; (*Replaced 44 of 1994 s. 3*)

“investigation” (調查) means an investigation by the Ombudsman under this Ordinance; (*Amended 74 of 1996 s. 11*)

“maladministration” (行政失當) means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes—

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power (including any discretionary power) or authority including any action which—
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact; or
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

“officer” (人員) includes employee;

“Ombudsman” (專員) means The Ombudsman referred to in section 3(1); (*Added 74 of 1996 s. 4. Amended 30 of 2001 s. 2*)

“organization” (機構) means an organization specified in Schedule 1. (*Replaced 44 of 1994 s. 3*)

(*Amended 74 of 1996 s. 4*)

(2) Any reference in this Ordinance to an organization includes a reference to the officers of that organization. (*Amended 44 of 1994 s. 3*)

PART II

APPOINTMENT OF THE OMBUDSMAN

(*Amended 74 of 1996 s. 11*)

3. Appointment and tenure of office

(1) For the purposes of this Ordinance, there shall be a corporation sole known as “The Ombudsman”. (*Replaced 30 of 2001 s. 3*)

(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. (*Replaced 30 of 2001 s. 3*)

- (3) 行政長官須親自簽署文書委任一人為專員。(由 2001 年第 30 號第 3 條代替)
- (3A) 除第 (4) 款另有規定外，獲委為專員的人的任期為 5 年，並有資格獲委連任。(由 2001 年第 30 號第 3 條增補)
- (4) 獲委為專員的人——
- (a) 可隨時以書面通知向行政長官辭職；
 - (b) 可以其無能力履行職能或行為不當為理由，經立法會以決議方式批准而由行政長官免職。(由 2002 年第 23 號第 126 條修訂)
- (5) 獲委為專員的人的薪酬、委任條款及條件，由行政長官決定。(由 2001 年第 30 號第 3 條修訂)
- (6) 支付予獲委為專員的人的薪金或其他利益，由政府一般收入支付。(由 2001 年第 30 號第 3 條修訂)
- (7) 附表 1A 所載關於財務及報告的條文就專員具有效力。(由 2001 年第 30 號第 3 條增補)
- (由 1998 年第 25 號第 2 條修訂)

4. 專員不得擔任其他職位

未經行政長官明確批准，獲委為專員的人不得擔任其專員職位以外的其他有收益職位，亦不得從事其專員職責以外的其他有報酬職業。

(由 1998 年第 25 號第 2 條修訂；由 2001 年第 30 號第 4 條修訂；由 2002 年第 23 號第 126 條修訂)

5. 臨時空缺的填補

- (1) 如獲委為專員的人——(由 2001 年第 30 號第 5 條修訂)
- (a) 去世；
 - (b) 辭職；
 - (c) 遭免職；(由 2002 年第 23 號第 126 條修訂)
 - (d) 不在香港；或
 - (e) 因其他理由不能執行其職能，

- (3) The Chief Executive shall in writing under his hand appoint a person to be the Ombudsman. (Replaced 30 of 2001 s. 3)
- (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. (Added 30 of 2001 s. 3)
- (4) A person appointed to be the Ombudsman may—
- (a) at any time resign his office by notice in writing to the Chief Executive;
 - (b) be removed from office by the Chief Executive with the approval by resolution of the Legislative Council on the ground of inability to discharge the functions of his office, or misbehaviour.
- (5) The emoluments of the person appointed to be the Ombudsman, and the terms and conditions of his appointment, shall be determined by the Chief Executive. (Amended 30 of 2001 s. 3)
- (6) Any salary or other benefit payable to the person appointed to be the Ombudsman shall be charged on the general revenue. (Amended 30 of 2001 s. 3)
- (7) The financial and report provisions set out in Schedule 1A shall have effect with respect to the Ombudsman. (Added 30 of 2001 s. 3)
- (Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

4. Ombudsman to hold no other office

The person appointed to be the Ombudsman shall not, without the specific approval of the Chief Executive, hold any office of profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(Amended 74 of 1996 s. 11; 25 of 1998 s. 2; 30 of 2001 s. 4)

5. Filling of temporary vacancy

- (1) If the person appointed to be the Ombudsman—(Amended 30 of 2001 s. 5)
- (a) dies;
 - (b) resigns;
 - (c) is removed from office;
 - (d) is absent from Hong Kong; or
 - (e) is for any other reason unable to perform the functions of his office,

則其職能須由獲委為署理專員的人承擔及執行，直至該獲委為專員的人恢復執行其職能，或直至根據第 3 條委任另一人為專員為止；署理專員須由行政長官親自簽署文書委任。（由 1998 年第 25 號第 2 條修訂；由 2001 年第 30 號第 5 條修訂）

(2) 本條例中所有適用於獲委為專員的人的條文（第 3(3)、(3A) 及 (4) 條除外），均適用於獲委為署理專員的人。（由 2001 年第 30 號第 5 條代替）

6. 專員的職員

(1) 專員可委任所需人選，使他在本條例下的職能得以有效執行。

(2) 根據第 (1) 款獲委任的人的薪金、委任條款及條件，須由專員決定。（由 2001 年第 30 號第 6 條修訂）

(3) 除第 3(6) 條另有規定外，專員的開支，以及支付予根據第 (1) 款獲委任的人的薪金或利益，須由立法會為該用途而通過的撥款支付。

（由 1998 年第 25 號第 2 條修訂）

6A. 顧問

專員可不時委任他認為有需要的技術或專業顧問，以協助他根據本條例執行他的職能。

（由 2001 年第 30 號第 7 條增補）

6B. 不得視專員為政府的僱員或代理人

(1) 除第 (2) 及 (3) 款另有規定外，專員不得視為政府的僱員或代理人，亦不得視為享有政府的地位、豁免權或特權。

(2) 為施行《防止賄賂條例》（第 201 章），獲委為專員的人須當作為該條例第 2 條所指的公職人員。

(3) 為施行《公共財政條例》（第 2 章），獲委為專員的人須當作為公職人員，並須根據該條例第 12 條被指定為管制專員的開支預算的管制人員。

（由 2001 年第 30 號第 7 條增補）

those functions shall, until such time as he resumes the functions of his office or another person is appointed to be the Ombudsman under section 3, be assumed and performed by such person as may be appointed in writing under the hand of the Chief Executive to act as Ombudsman. (Amended 25 of 1998 s. 2; 30 of 2001 s. 5)

(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. (Replaced 30 of 2001 s. 5)

(Amended 74 of 1996 s. 11)

6. Staff of Ombudsman

(1) The Ombudsman may appoint such persons as may be necessary for the efficient carrying out of his functions under this Ordinance.

(2) The salaries of persons appointed under subsection (1), and the terms and conditions of their appointments, shall be determined by the Ombudsman. (Amended 25 of 1998 s. 2; 30 of 2001 s. 6)

(3) Subject to section 3(6) the expenses of the Ombudsman and any salary or benefit payable to any person appointed under subsection (1) shall be paid out of moneys appropriated for that purpose by the Legislative Council.

(Amended 74 of 1996 s. 11)

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.

(Added 30 of 2001 s. 7)

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.

(Added 30 of 2001 s. 7)

第 III 部

專員的職能及權力

(由 2001 年第 30 號第 8 條修訂)

7. 專員的職能及權力

(1) 凡——

- (a) 附表 1 第 I 部所列任何機構在行使該機構的行政職能時採取或由他人代其採取任何行動；或
- (b) 附表 1 第 II 部所列任何機構在就政府所頒布的《公開資料守則》而行使該機構的行政職能時採取或由他人代其採取任何行動，

則專員在以下情況下可調查該行動——

- (i) 有人提出申訴，聲稱因與該行動相關的行政失當，以致他遭受不公平待遇；或
- (ii) 儘管無人向專員提出申訴，但專員認為因與該行動相關的行政失當，以致可能已有人遭受不公平待遇。(由 1996 年第 74 號第 6 條代替)

(1A) 專員可作出所有為更佳地執行其職能而需要作出的或連帶須作出的事情，亦可作出所有有助於更佳地執行其職能的事情，而在不損害前文的一般性的原則下，專員尤可——

- (a) 取得和持有他認為為以下目的而需要的任何類別的財產——
 - (i) 提供地方給專員或任何根據第 6(1) 條委任的人；
 - (ii) 執行專員的任何職能，並可在持有該財產所按的條款及條件的規限下處置該財產；
- (b) 訂立、履行、轉讓、更改或撤銷任何合約、協議或其他義務，或接受他人所轉讓的任何合約、協議或其他義務。(由 2001 年第 30 號第 9 條增補)

(2) 本條例所授予專員的權力，須按照本條例的條文行使；儘管有任何法律條文規定某項決定屬最終決定，或規定不得就該項決定提出上訴，或規定不得反對、審核、推翻或質疑有關機構的處事程序或其所作的決定，專員仍可按照本條例行使權力。(由 1994 年第 44 號第 4 條修訂)

(3) (由 1994 年第 44 號第 4 條廢除)

PART III

FUNCTIONS AND POWERS OF THE OMBUDSMAN

(Amended 74 of 1996 s. 11; 30 of 2001 s. 8)

7. Functions and powers of Ombudsman

- (1) The Ombudsman may investigate any action taken by or on behalf of—
 - (a) an organization set out in Part I of Schedule 1 in the exercise of its administrative functions; or
 - (b) an organization set out in Part II of Schedule 1 in the exercise of its administrative functions in relation to the Code on Access to Information published by the Government,

in any case where—

- (i) a complaint is made by a person who claims to have sustained injustice in consequence of maladministration in connection with that action; or
- (ii) notwithstanding that no complaint has been made to him, he is of the opinion that any person may have sustained injustice in consequence of maladministration in connection with that action. (Replaced 74 of 1996 s. 6)

(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. (Added 30 of 2001 s. 9)

(2) The powers conferred on the Ombudsman by this Ordinance shall be exercised in accordance with the provisions of this Ordinance but may be so exercised notwithstanding any provision in any law to the effect that any decision shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the organization whose decision it is shall be challenged, reviewed, quashed, or called in question. (Amended 44 of 1994 s. 4; 74 of 1996 s. 11)

(3) (Repealed 44 of 1994 s. 4)

8. 不受調查的行動

專員不得展開或繼續與附表 2 所指明的行動或事項有關的調查。

(由 1994 年第 44 號第 5 條修訂)

9. 有關專員權能問題的斷定

在斷定是否展開、繼續或中止一項調查時，除本條例條文另有規定外，專員須按照其本身的酌情決定權而行事；至於某一項申訴是否根據本條例妥當地提出，亦須由專員斷定。

9A. 費用

(1) 專員可就符合以下說明的服務向某人收取由專員決定的合理費用——

(a) 經行政署長批准的；及

(b) 專員根據本條例向該人提供的 (但依據本條例委予的義務而提供的除外)。

(2) 專員可將根據第 (1) 款須繳付的任何費用作為拖欠他的民事債項予以追討。

(由 2001 年第 30 號第 10 條增補)

第 IV 部

申訴

10. 調查申訴的限制

(1) 專員雖獲本條例授予概括性的權力，但如有以下情形，專員不得對申訴展開或繼續調查——

(a) 申訴人對他所申訴的行動已實際知悉超過 24 個月專員才接獲申訴；但如專員信納在某一申訴的特別情況下，對該逾期提出的申訴進行調查是恰當者，則屬例外；

(b) 申訴由匿名者提出；

(c) 申訴人無從識別或下落不明；

8. Actions not subject to investigation

The Ombudsman shall not undertake or continue any investigation that relates to any action or matter specified in Schedule 2.

(Amended 44 of 1994 s. 5; 74 of 1996 s. 11)

9. Determination of questions relating to Ombudsman's authority

In determining whether to undertake, continue or discontinue an investigation, the Ombudsman shall, subject to the provisions of this Ordinance, act in accordance with his own discretion; and any question whether a complaint is duly made under this Ordinance shall be determined by the Ombudsman.

(Amended 74 of 1996 s. 11)

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.

(Added 30 of 2001 s. 10)

PART IV

COMPLAINTS

10. Restrictions on investigation of complaints

(1) Notwithstanding the generality of the powers conferred on the Ombudsman by this Ordinance, the Ombudsman shall not undertake or continue an investigation into a complaint—

(a) if it relates to any action of which the complainant has had actual knowledge for more than 24 months before the complaint is received by the Ombudsman, unless the Ombudsman is satisfied that in the particular circumstances it is proper to conduct an investigation into a complaint not made within that period;

(b) if the complaint is made anonymously;

(c) if the complainant cannot be identified or traced;

- (d) 申訴並非由感到受屈的個別人士親自提出，而在本可提出申訴的個別人士已去世或因其他理由不能親自行事的情況下，申訴並非由該人士的遺產代理人或家庭成員或其他適宜代表該人士的個別人士提出；（由 1994 年第 44 號第 6 條修訂）
- (da) 申訴是代任何法人團體作出，而專員並不信納該法人團體曾授權作出該項申訴；（由 1994 年第 44 號第 6 條增補）
- (db) 就有關申訴而言，以下條件無一符合——
- (i) 在採取申訴所針對的行動時，申訴人（如屬個別人士者）居住於香港或（如屬法人團體者）在香港有營業地點；或
 - (ii) 申訴所針對的行動是就感到受屈的人在香港時所採取的；或
 - (iii) 申訴所針對的行動是就任何在香港產生或出現的權利或義務而採取；或（由 1994 年第 44 號第 6 條增補）
- (c) 對於申訴所針對的行動，申訴人——
- (i) 根據任何條例有權利或曾經有權利按案情的是非曲直向行政長官、行政長官會同行政會議、由任何條例或根據任何條例組成的審裁處或委員會或其他權力機構提出上訴或反對，或申請審核；或（由 1998 年第 25 號第 2 條修訂）
 - (ii) 有或曾經有以下補救方法，即向法院提出司法審核以外的法律程序，或向由任何條例或根據任何條例組成的審裁處提出法律程序，但如專員信納在某一申訴的特別情況下，預期中訴人會使用或曾經會使用該權利或補救方法是不合理的，則屬例外。
- (2) 專員在考慮申訴事件的所有情況後，如得出以下意見，則可酌情決定不對該申訴展開或繼續調查——
- (a) 以前曾調查該宗申訴或性質極為相近的申訴，而結果專員認為並無行政失當之處；
 - (b) 申訴關乎微不足道的事；

- (d) if the complaint is not made by the individual aggrieved himself or, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself, by his personal representative or by a member of his family or other individual suitable to represent him; (Amended 44 of 1994 s. 6)
- (da) where the complaint is made on behalf of a body corporate, if the Ombudsman is not satisfied that the body corporate authorized the making of the complaint; (Added 44 of 1994 s. 6)
- (db) if none of the following conditions is fulfilled in relation to the complaint—
- (i) when the action which is the subject of the complaint was taken, the complainant was (in the case of an individual) resident in Hong Kong or (in the case of a body corporate) had a place of business in Hong Kong; or
 - (ii) the action which is the subject of the complaint was taken in relation to the person aggrieved while he was in Hong Kong; or
 - (iii) the action which is the subject of the complaint was taken in relation to any right or obligation which accrued or arose in Hong Kong; or (Added 44 of 1994 s. 6)
- (e) if the complaint relates to any action in respect of which the complainant has or had—
- (i) under any Ordinance, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to the Chief Executive, the Chief Executive in Council, any tribunal constituted by or under any Ordinance, or any board or other authority so constituted; or (Amended 25 of 1998 s. 2)
 - (ii) a remedy by way of proceedings in a court, other than by way of judicial review, or in any tribunal constituted by or under any Ordinance,
- unless the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or to have resorted to that right or remedy.
- (2) The Ombudsman may in his discretion decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that—
- (a) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Ombudsman was of the opinion that there had been no maladministration;
 - (b) the subject matter of the complaint is trivial;

- (c) 申訴事屬瑣屑無聊、無理取鬧或非真誠作出；或
- (d) 因其他理由而無需調查或進一步調查。

(3) 專員如決定不對申訴展開或繼續調查，須將此決定及其理由通知申訴人。

(由 1994 年第 44 號第 6 條修訂)

11. 專員可展開或繼續調查已撤回的申訴

專員凡認為調查一項申訴是符合公眾利益的，則即使申訴人已撤回該申訴，他仍可對該申訴展開或繼續調查，而在此情況下，本條例的條文須適用於該申訴及申訴人，猶如該申訴並未撤回一樣。

11A. 初步查訊

專員可為斷定是否展開調查而進行他認為適當的初步查訊。

(由 2001 年第 30 號第 11 條增補)

11B. 以調解方式處理申訴

(1) 專員在考慮有關個案的所有情況後，如認為某宗申訴的標的事項不涉及及行政失當，或只涉及輕微的行政失當，則可決定根據本條以調解方式處理該宗申訴。

(2) 專員可授權任何根據第 6(1) 條獲委任的人為進行調解的調解員。

(3) 根據第 3(3) 條獲委為專員的人不得以調解員身分參與任何調解。

(4) 申訴人與申訴所涉機構參與調解屬於自願，任何一方可隨時退出。

(5) 調解員可隨時終止調解。

(6) 如根據本條以調解方式處理申訴的嘗試並不成功，則——

(a) 該申訴須根據本部處理，猶如從未進行調解一樣；及

(c) the complaint is frivolous or vexatious or is not made in good faith; or

(d) any investigation or further investigation is for any other reason unnecessary.

(3) If the Ombudsman decides not to undertake or continue an investigation into a complaint he shall inform the complainant of that decision and of his reasons. (Amended 44 of 1994 s. 6)

(Amended 74 of 1996 s. 11)

11. Ombudsman may undertake or continue investigation notwithstanding withdrawal of complaint

Where the Ombudsman is of the opinion that it is in the public interest so to do, he may undertake or continue an investigation into a complaint notwithstanding that the complainant has withdrawn the complaint and, in any such case, the provisions of this Ordinance shall apply to the complaint and the complainant as if the complaint had not been withdrawn.

(Amended 74 of 1996 s. 11)

11A. Preliminary inquiries

For the purposes of determining whether to undertake an investigation, the Ombudsman may conduct such preliminary inquiries as he considers appropriate.

(Added 30 of 2001 s. 11)

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) 有關調解員不得以調查人員身分參與隨後就該申訴而進行的任何調查。
- (7) 在調解過程中所說出的任何話語或承認的任何事宜，以及為該調解而擬備的任何文件——
- (a) 不得在隨後就有關申訴而進行的任何調查中獲接納為證據，除非說出有關話語或承認有關事宜的人，或有關文件所關乎的人，同意該等話語、事宜或文件獲接納為證據；
- (b) 不得在任何法庭、研訊或其他法律程序中獲接納為針對任何人的證據，而任何關於該調解的證據，亦不得用以針對任何人。
- (8) 本條的規定並不阻止以按照本條行事以外的方式處理申訴。

(由 2001 年第 30 號第 11 條增補)

第 V 部

處事程序

12. 專員的處事程序

- (1) 專員在調查任何行動之前，須將其進行調查的意向通知所涉機構的首長，並可徵詢其意見。(由 1994 年第 44 號第 7 條修訂)
- (2) 專員如認為在某個案的特別情況下，不適宜遵照第 (1) 款辦理，則該款即不適用，而專員無須遵照該款辦理，但須改為將其進行調查的意向通知政務司司長。(由 1997 年第 362 號法律公告修訂)
- (3) 除本條例另有規定外，專員可——
- (a) 向他認為適當的人獲取任何資料、文件或物件，並可作出他認為適當的查詢；及 (由 1994 年第 44 號第 7 條修訂)
- (b) 按他認為適當的方式規管本身的處事程序。
- (4) 每項調查均須不公開進行，大律師及律師在專員席前並無發言權，但如專員認為適當則可在專員席前出席。
- (5) 專員沒有必要召開聆訊，而除第 (6) 款另有規定外，任何人均無權要求專員聆聽其陳述。

- (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.

(Added 30 of 2001 s. 11)

PART V

PROCEEDINGS

12. Proceedings of Ombudsman

- (1) Before investigating any action, the Ombudsman shall inform the head of the organization affected of his intention to conduct an investigation and may seek his comments. (Amended 44 of 1994 s. 7)
- (2) Subsection (1) shall not apply where the Ombudsman thinks compliance is inappropriate in the particular circumstances of the case and, instead of complying with that subsection, informs the Chief Secretary for Administration of his intention to conduct an investigation. (Amended L.N. 362 of 1997)
- (3) Subject to the provisions of this Ordinance, the Ombudsman—
- (a) may obtain any information, document or thing from such persons, and make such inquiries, as he thinks fit; and (Amended 44 of 1994 s. 7)
- (b) may regulate his procedure in such manner as he thinks fit.
- (4) Every investigation shall be conducted in private and counsel and solicitors shall not have any right of audience before the Ombudsman, but may appear before him if he thinks fit.
- (5) It shall not be necessary for the Ombudsman to hold any hearing and, subject to subsection (6), no person shall be entitled to be heard by the Ombudsman.

(6) 如在調查過程的任何時間，專員覺得可能有足夠理由提出報告或建議，而該報告或建議又可能對任何人員、機構或任何人作出批評或帶來不利影響，則專員須讓該人員、所涉機構的首長或該人有機會獲得聆聽。（由 1994 年第 44 號第 7 條修訂；由 2002 年第 23 號第 126 條修訂）

13. 證據

(1) 在符合第 14 條的規定下，專員可傳召——

(a) 他認為能夠就他正在調查的行動提供有關資料的人，不論該人是否任何機構的人員；及

(b) 申訴人，

到其席前，並可加以訊問；專員如認為該人或該申訴人（視屬何情況而定）可能管有或控制與受調查行動有關的資料、文件或物件，可要求他提供該資料及出示該文件或物件，不論該資料、文件或物件是否正由任何機構保管或控制。（由 1994 年第 44 號第 8 條修訂）

(2) 專員如認為適當，可為根據第 (1) 款進行的訊問而監督。

(3) 除非是與根據第 14(3) 條發出的證明書之標的有關，否則——

(a) 關於機構管有或控制（或曾管有或控制）資料、文件或其他物件的保密義務或由法律施加的披露限制，不適用於為根據本條例進行的調查而作的披露；及（由 2001 年第 30 號第 12 條修訂）

(b) 專員要求任何人為根據本條例進行的調查而披露或出示 (a) 段所提述的資料、文件或物件，即為向專員披露該資料或出示該文件或物件的充足權力依據。

(4) 專員可支付申訴人及證人在根據本條例進行的調查過程中所招致的合理開支。

(6) If at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him to make any report or recommendation that may criticize or adversely affect any officer, organization or person he shall give to the officer, head of the organization affected or person an opportunity to be heard. (Amended 44 of 1994 s. 7)

(Amended 74 of 1996 s. 11)

13. Evidence

(1) Subject to section 14, the Ombudsman may summon before him—

(a) any person, whether or not he is an officer of any organization, who in the opinion of the Ombudsman is able to give any information relating to any action that is being investigated by the Ombudsman; and

(b) any complainant,

and may examine them and require them to furnish to him any information, and to produce any document or thing which, in the Ombudsman's opinion, whether or not it is in the custody or under the control of any organization, relates to that action and which may be in the possession or under the control of that person or, as the case may be, of the complainant. (Amended 44 of 1994 s. 8)

(2) The Ombudsman may administer an oath for the purposes of an examination under subsection (1) if he thinks fit.

(3) Except in relation to the subject of any certificate issued under section 14(3)—

(a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of an organization, shall apply to its disclosure for the purposes of an investigation under this Ordinance; and (Amended 30 of 2001 s. 12)

(b) any requirement by the Ombudsman that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation under this Ordinance shall be sufficient authority for its disclosure or production to the Ombudsman.

(4) The Ombudsman may pay the reasonable expenses of complainants and witnesses incurred during the course of an investigation under this Ordinance.

(Amended 74 of 1996 s. 11)

14. 保護證人等

(1) 任何人為本條例的施行而在提供資料、回答問題及出示文件及物件方面享有的特權，與高等法院民事訴訟中的證人所享有的特權相同；但除第(3)款另有規定外，任何法律規則如以披露文件或物件或回答問題會危害公眾利益為理由而授權或規定不出示任何文件或物件或不回答問題，則該法律規則不適用於任何調查。

(2) 某人或任何其他人士於調查過程中所作的陳述或回答，除了就在該某人經宣誓的證供而檢控的假證供罪或在本條例所訂罪行的審訊中可接納為證據外，不得在任何法庭、研訊或其他法律程序中接納為針對任何人的證據；而就任何調查提供的證據，亦不得用以針對任何人。

(3) 凡提供任何資料、回答任何問題或出示任何文件或物件——

(a) 經行政長官以證明書說明可能有損香港的保安、防衛或國際關係(包括與任何國際組織的關係)；或

(b) 經政務司司長以證明書說明可能——(由1997年第362號法律公告修訂)

(i) 有損刑事罪的調查或偵查；或

(ii) 牽涉未經行政長官同意而披露行政會議的審議內容，

則專員不得要求任何人提供該資料、給予該回答或出示該文件或物件(視屬何情況而定)。

(由1998年第25號第2條修訂)

15. 專員及其職員須保密

(1) 除第(2)及(3)款另有規定外，專員及每名根據第6或6A條獲委任的人，均須將符合以下說明的一切事項保密——(由2001年第30號第13條修訂)

(a) 由任何調查或向專員作出的申訴所引起的；及

(b) 是專員或每名根據第6或6A條獲委任的人在行使其職能時所實際知悉的。(由1996年第74號第7條代替。由2001年第30號第13條修訂)

14. Protection of witnesses, etc.

(1) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things, for the purposes of this Ordinance, as witnesses have in civil proceedings in the High Court but, subject to subsection (3), any rule of law which authorizes or requires the withholding of any document or thing, or the refusal to answer any question, on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest, shall not apply in respect of any investigation.

(2) Except on the trial of any person for perjury in respect of his sworn testimony, or for an offence under this Ordinance, no statement made or answer given by that or any other person in the course of any investigation shall 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 an investigation shall be given against any person.

(3) Where the giving of any information or the answering of any question or the production of any document or thing—

(a) is the subject of a certificate by the Chief Executive that it might prejudice security, defence or international relations (including relations with any international organization) in respect of Hong Kong; or

(b) is the subject of a certificate by the Chief Secretary for Administration that it might—(Amended L.N. 362 of 1997)

(i) prejudice the investigation or detection of crime; or

(ii) involve the disclosure, without the consent of the Chief Executive, of the deliberations of the Executive Council,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced. (Amended 74 of 1996 s. 11)

(Amended 25 of 1998 s. 2)

15. Ombudsman and his staff to maintain secrecy

(1) The Ombudsman and every person appointed under section 6 or 6A shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that—(Amended 30 of 2001 s. 13)

(a) arise from any investigation or complaint made to the Ombudsman; and

(b) come to their actual knowledge in the exercise of their functions. (Replaced 74 of 1996 s. 7)

(2) 第(1)款不得用於阻止專員或根據第6或6A條獲委任的人——(由2001年第30號第13條修訂)

- (a) 在本條例所訂罪行的法律程序過程中，披露與該法律程序有關的任何事項；
- (b) 向他認為適當的權力機構舉報任何刑事罪的證據；
- (c) 在認為第(1)款所提述的事項——
 - (i) 是可作為任何人提出申訴的理由時；或
 - (ii) 是為調查一項申訴或決定是否展開、繼續或中止一項調查而有需要向任何人披露時，
 向該人披露該事項。(由1996年第74號第7條代替)

(3) 專員在根據本條例提交的報告中，可披露他認為應予披露以支持其結論和建議的事項，但如行政長官證明披露該事項可能有損香港的保安、防衛或國際關係(包括與任何國際組織的關係)，或會在其他方面有違公眾利益，則不得披露該事項。(由1998年第25號第2條修訂)

(4) 任何人不得違反第(1)款的規定，即屬犯罪，可處罰款\$50,000及監禁2年。

16. 專員的報告

(1) 專員如就任何申訴而調查任何行動後，認為該調查顯露以下一項或多於一項情況——

- (a) 有證據顯示任何機構有人員行政失當；(由1994年第44號第9條修訂)
- (b) 事件應轉介所涉機構的首長作進一步考慮；(由1994年第44號第9條修訂)
- (c) 有一項不作為應予糾正；
- (d) 有關行動應予撤銷或變更；
- (e) 有關行動所依據的慣例應予更改；
- (f) 有關行動所依據的法律觀點應予重新考慮；
- (g) 採取有關行動的理由本應說明；
- (h) 有其他步驟應予採取，

則專員如認為適宜，可就其意見及理由作出報告，連同以下文件(如有的話)——(由1996年第74號第8條修訂)

(2) Subsection (1) shall not apply so as to prevent the Ombudsman or any person appointed under section 6 or 6A from— (Amended 74 of 1996 s. 11; 30 of 2001 s. 13)

- (a) disclosing in the course of proceedings for an offence under the Ordinance, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Ombudsman or person so appointed—
 - (i) may be ground for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued. (Replaced 74 of 1996 s. 7)

(3) The Ombudsman may disclose in any report made by him under this Ordinance any matter that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations, other than a matter in respect of which the Chief Executive certifies that its disclosure might prejudice security, defence, or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest. (Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

(4) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$50,000 and to imprisonment for 2 years.

16. Reports by Ombudsman

(1) In any case in which, after making an investigation into any action, the Ombudsman is of the opinion that one or more of the following circumstances have been revealed—

- (a) there is evidence of any maladministration on the part of any officer of any organization; (Amended 44 of 1994 s. 9)
- (b) the matter should be referred to the head of the organization affected for further consideration; (Amended 44 of 1994 s. 9)
- (c) an omission should be rectified;
- (d) the action should be cancelled or varied;
- (e) any practice on which the action was based should be altered;
- (f) any view of the law on which the action was based should be reconsidered;
- (g) reasons should have been given for the action;
- (h) any other steps should be taken,

the Ombudsman may, if he thinks fit to do so, report his opinion and his reasons, together with— (Amended 74 of 1996 s. 8)

- (i) 一項說明他認為應採用的補救辦法的陳述；
- (ii) 一項關於他認為適宜提出的建議的陳述；
- (iii) 由所涉機構的首長就專員的調查所得、意見或建議而提出或他人代其提出的評論副本一份，（由 2002 年第 23 號第 126 條修訂）

交予所涉機構的首長，如專員認為在某個案的特別情況下，不適宜向該機構的首長作出報告，則可向行政長官作出該報告。（由 1994 年第 44 號第 9 條修訂；由 1996 年第 74 號第 8 條修訂；由 1998 年第 25 號第 2 條修訂）

(2) 專員在根據第 (1) 款向任何機構的首長提交的報告中，可指明他認為在所有情況下就該報告採取行動的合理期間。（由 1994 年第 44 號第 9 條修訂）

(3) 專員如認為根據第 (1) 款向任何機構的首長提交的報告——（由 1994 年第 44 號第 9 條修訂）

- (a) 在報告所指明的期間內，未獲充分採取行動；或
- (b) (如該報告並無指明期間) 在他認為在所有情況下均屬合理的期間內，未獲充分採取行動，

則專員可將該報告及建議，連同他認為適宜提出的其他觀點，向行政長官呈交。（由 1998 年第 25 號第 2 條修訂）

(4) 專員根據第 (3) 款向行政長官呈交的每份報告，須連同所涉機構的首長就該報告而提出或他人代其提出的任何評論的副本一份，一併呈交。（由 1994 年第 44 號第 9 條修訂；由 1998 年第 25 號第 2 條修訂）

(5) 除根據第 (1) 或 (3) 款提交報告外，專員如認為曾有嚴重的不當或不公平事件發生，可向行政長官提交另一份報告，述明其意見及理由。（由 1998 年第 25 號第 2 條修訂）

(6) 在專員根據第 (5) 款提交的報告接獲後 1 個月內，或行政長官釐定的更長期間內，須將該報告的文本提交立法會省覽。（由 1998 年第 25 號第 2 條修訂）

16A. 公布報告

(1) 在調查任何行動後，專員如認為將報告公布是符合公眾利益的，則可按其認為適當的方式，將調查報告公布。

- (i) a statement of any remedy that he considers should be provided;
- (ii) a statement of any recommendation that he thinks fit to make;
- (iii) a copy of the comments made by or on behalf of the head of the organization affected on the finding, opinion or recommendation of the Ombudsman,

if any, to the head of the organization affected or, if the Ombudsman thinks it appropriate in the particular circumstances of the case not to report to the head of the organization, to the Chief Executive. (Amended 44 of 1994 s. 9; 25 of 1998 s. 2)

(2) The Ombudsman may specify in a report under subsection (1) to a head of the organization a time within which the Ombudsman is of the opinion it is reasonable in all the circumstances for the report to be acted upon. (Amended 44 of 1994 s. 9)

(3) Where a report under subsection (1) to a head of the organization is not, in the opinion of the Ombudsman, adequately acted upon— (Amended 44 of 1994 s. 9)

- (a) within the time specified in the report; or
- (b) if no time is specified in the report, within such time as the Ombudsman is of the opinion is reasonable in all the circumstances,

the Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive. (Amended 25 of 1998 s. 2)

(4) The Ombudsman shall attach to every report submitted to the Chief Executive under subsection (3) a copy of any comments made thereon by or on behalf of the head of the organization affected. (Amended 44 of 1994 s. 9; 25 of 1998 s. 2)

(5) In addition to making a report under subsection (1) or (3) the Ombudsman may, where he is of the opinion that a serious irregularity or injustice has taken place, make a further report stating his opinion and his reasons to the Chief Executive. (Amended 25 of 1998 s. 2)

(6) Within a period of 1 month, or such longer period as the Chief Executive may determine, after receipt of the report from the Ombudsman under subsection (5), a copy of the report shall be laid before the Legislative Council. (Amended 25 of 1998 s. 2)

(Amended 74 of 1996 s. 11)

16A. Publication of reports

(1) After making an investigation into any action the Ombudsman may, if he is of the opinion that it is in the public interest so to do, publish a report on the investigation in such manner as he thinks fit.

(2) 根據第 (1) 款公布的報告不得披露以下人士的身分—— (由 2001 年第 30 號第 14 條修訂)

- (a) 感到受屈的人；
- (b) 申訴人；或
- (c) 有關機構的人員，而其行動正是有關的調查所針對者，或他本人在其他方面受該項調查涉及者。

(3) 第 (2) 款不得解釋為阻止專員披露根據第 (1) 款公布的報告中所述機構的名稱。

(由 1994 年第 44 號第 10 條增補)

17. 須獲通知調查結果的人

(1) 專員如就任何申訴進行調查，須以他認為適當的方式及在他認為適當的時間，將以下事項通知申訴人—— (由 1994 年第 44 號第 11 條修訂)

- (a) 調查的結果；
- (b) 根據第 16 條作出的任何報告或建議，以及所涉機構的首長就該報告或建議而提出或別人代其提出的評論； (由 1994 年第 44 號第 11 條修訂)
- (c) 他認為適宜就該事件提出的評論；及
- (d) 行政長官要求專員轉告申訴人的任何評論。 (由 1998 年第 25 號第 2 條修訂)

(2) 專員如就任何個案進行調查，除非他已根據第 16(1) 條向所涉機構的首長作出報告，否則須以他認為適當的方式及在他認為適當的時間，將調查結果通知該首長。 (由 1994 年第 44 號第 11 條修訂)

(3) (由 1994 年第 44 號第 11 條廢除)

第 VI 部

補充條文

18. 特權

就誹謗法而言，在以下情況公布任何事項均享有絕對特權——

- (a) 專員或其職員為根據本條例進行任何調查，或為施行第 16、16A 或 17 條或附表 1A 第 3(4)(a) 條而作出報告、公布或發出通知。 (由 1994 年第 44 號第 12 條修訂；由 2001 年第 30 號第 15 條修訂；由 2002 年第 23 號第 126 條修訂)

(2) A report published under subsection (1) shall not disclose the identity of— (Amended 30 of 2001 s. 14)

- (a) any person aggrieved;
- (b) any complainant; or
- (c) any officer of the organization whose action is the subject of the investigation or who is otherwise involved in the investigation. (Amended 30 of 2001 s. 14)

(3) Nothing in subsection (2) shall be construed as preventing the Ombudsman from disclosing the name of an organization in a report published under subsection (1).

(Added 44 of 1994 s. 10. Amended 74 of 1996 s. 11)

17. Persons to be informed of result of investigation

(1) In any case where he conducts an investigation upon complaint, the Ombudsman shall inform the complainant in such manner and at such time as he thinks fit, of— (Amended 44 of 1994 s. 11; 74 of 1996 s. 11)

- (a) the result of his investigation;
- (b) any report or recommendation made under section 16 and any comments made thereon by or on behalf of the head of the organization affected; (Amended 44 of 1994 s. 11)
- (c) such comments on the matter as he thinks fit to make; and
- (d) such comments, if any, as the Chief Executive may require him to forward to the complainant. (Amended 25 of 1998 s. 2)

(2) In any case where he conducts an investigation, the Ombudsman shall, unless he has already made a report under section 16(1) to the head of the organization affected, inform him, in such manner and at such time as he thinks fit, of the result of his investigation. (Amended 44 of 1994 s. 11; 74 of 1996 s. 11)

(3) (Repealed 44 of 1994 s. 11)

PART VI

SUPPLEMENTARY

18. Privilege

For the purposes of the law of defamation, absolute privilege shall be attached to the publication of any matter—

- (a) by the Ombudsman or his staff to any person for the purpose of an investigation under this Ordinance, or for the purposes of section 16, 16A or 17 or section 3(4)(a) of Schedule 1A. (Amended 44 of 1994 s. 12; 74 of 1996 s. 11; 30 of 2001 s. 15)

(b) (由 1994 年第 44 號第 12 條廢除)

18A. 豁免權

任何人如在執行或其意是執行本條例下的任何職能，或行使或其意是行使本條例下的任何權力時，出於真誠而作出或不作出任何作為，該人無須就該等作為負上個人民事法律責任，亦無須就該等作為而對任何民事申索負上個人法律責任。

(由 2001 年第 30 號第 16 條增補)

19. 機構的首長的職責

所涉機構的首長已採取的任何行動，或該首長就有關調查所針對的任何決定而採取進一步行動的任何權力或職責，均不受該項調查影響。

(由 1994 年第 44 號第 13 條修訂)

20. 進入處所的權力

(1) 為施行本條例，並在符合第 (2) 及 (3) 款的規定下，專員可隨時——

(a) 進入任何機構所佔用、管理或控制的任何處所； (由 1994 年第 44 號第 14 條修訂)

(b) 視察該處所；及

(c) 在符合第 13 及 14 條的規定下，在該處所內進行屬其職權範圍內的調查。

(2) 專員進入任何該等處所前，須通知佔用、管理或控制該處所的有關機構的首長。 (由 1994 年第 44 號第 14 條修訂)

(3) 行政長官如信納，將指明的某處所或某類處所列入第 (1) 款的適用範圍內，可能導致有損香港的保安、防衛或國際關係 (包括與任何國際組織的關係)，則可不時向專員發出通知，將指明的某處所或某類處所豁除，使其不屬該款的適用範圍。 (由 1998 年第 25 號第 2 條修訂)

(b) (Repealed 44 of 1994 s. 12)

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.

(Added 30 of 2001 s. 16)

19. Duty of head of organization

An investigation 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.

(Amended 44 of 1994 s. 13)

20. Power of entry on premises

(1) For the purposes of this Ordinance, but subject to subsections (2) and (3), the Ombudsman may at any time—

(a) enter any premises occupied, managed or controlled by an organization; (Amended 44 of 1994 s. 14)

(b) inspect the premises; and

(c) subject to the provisions of sections 13 and 14, carry out in the premises any investigation which is within his jurisdiction.

(2) Before entering any such premises the Ombudsman shall notify the head of the organization by which the premises are occupied, managed or controlled. (Amended 44 of 1994 s. 14)

(3) The Chief Executive may from time to time, by notice to the Ombudsman, exclude any specified premises or class of premises from the application of subsection (1) if he is satisfied that prejudice might otherwise be caused to security, defence, or international relations (including relations with any international organization) in respect of Hong Kong. (Amended 25 of 1998 s. 2)

(Amended 74 of 1996 s. 11)

21. 專員權力及職責的轉授

(1) 除第(2)款另有規定外，專員可藉憲報公告，將本條例授予他的權力轉授予任何根據第6條獲委任的人，但本條所授予的轉授權除外；專員凡覺得他本身與根據第7條進行的調查有或可能有利害關係，則須按本條轉授其權力，而不得親自展開或繼續該項調查，亦不得就該項調查作出報告。(由1994年第44號第15條修訂)

(2) 除非專員在第(1)款的規定下，須將本條例授予他的權力轉授他人，否則他根據本條例作出報告的權力或職責，均不得轉授；但如專員因上述規定而須轉授權力，則本條例委予專員的任何職責，須改為委予獲轉授專員在第(1)款下的權力的人。

22. (由2001年第30號第17條廢除)**23. 罪行**

任何人——

- (a) 無合法辯解而妨礙、阻撓或抗拒專員或任何其他人士根據本條例行使權力；
- (b) 無合法辯解而不遵從專員或任何其他人士根據本條例作出的合法要求；或
- (c) 於專員或任何其他人士根據本條例行使權力時，向其作出明知為虛假或不信為真的陳述，或以其他方式明知而誤導專員或該人，

即屬犯罪，可處罰款 \$10,000 及監禁 6 個月。

24. 修訂附表的權力

行政長官會同行政會議可藉憲報刊登的命令將附表 1 及 1A 修訂。

(由 1994 年第 44 號第 16 條代替。由 1998 年第 25 號第 2 條修訂；由 2001 年第 30 號第 18 條修訂)

21. Delegation of powers and duties of the Ombudsman

(1) Subject to subsection (2), the Ombudsman may, by notice in the Gazette, delegate to any person appointed under section 6 any of his powers under this Ordinance, except the power of delegation in this section and, where it appears to the Ombudsman that he has or may have an interest in any matter which is the subject of an investigation under section 7, shall so delegate his powers and shall not undertake personally or continue that investigation or report thereon. (Amended 44 of 1994 s. 15)

(2) Except where the Ombudsman is required by subsection (1) to delegate his powers under this Ordinance, any power or duty to make a report under this Ordinance shall not be delegated by him; but where he is so required any duty imposed by this Ordinance on the Ombudsman shall be imposed instead on the person to whom the Ombudsman's powers under subsection (1) are delegated.

(Amended 74 of 1996 s. 11)

22. (Repealed 30 of 2001 s. 17)**23. Offences**

Any person who—

- (a) without lawful excuse, obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Ordinance;
- (b) without lawful excuse, fails to comply with any lawful requirement of the Ombudsman or any other person under this Ordinance; or
- (c) makes a statement which he knows to be false or does not believe to be true, or otherwise knowingly misleads the Ombudsman or any other person in the exercise of his powers under this Ordinance,

commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

(Amended 74 of 1996 s. 11)

24. Power to amend Schedules

The Chief Executive in Council may by order published in the Gazette amend Schedules 1 and 1A.

(Replaced 44 of 1994 s. 16. Amended 25 of 1998 s. 2; 30 of 2001 s. 18)

25. 過渡性條文

對於在本條例生效日期前發生的事項，可根據本條例提出申訴；而就第 10(1)(a) 條而言，本條例的制定日期與生效日期之間相距的時間，不得計算在內，但在制定日期前的任何時間則須計算在內。

附表 1

[第 2 及 24 條]

本條例適用的機構

第 I 部^a

(由 1994 年第 44 號第 17 條修訂；由 1996 年第 74 號第 9 條修訂)

入境事務處。(由 1997 年第 362 號法律公告修訂)
九廣鐵路公司。(由 1994 年第 44 號第 17 條增補)
土木工程署。(由 1992 年第 183 號法律公告代替)
土地註冊處。(由 1993 年第 8 號第 28 條增補)
工業教育及訓練署。
工業貿易署。(由 2000 年第 173 號法律公告代替)
大學教育資助委員會秘書處。(由 1995 年第 35 號法律公告修訂)
公司註冊處。(由 1993 年第 8 號第 28 條增補)
公務及司法人員薪俸及服務條件諮詢委員會聯合秘書處。(由 2001 年第 253 號法律公告增補)
公務員培訓處。(由 1996 年第 155 號法律公告增補)
水務署。
立法會秘書處。(由 1994 年第 14 號第 24 條代替。由 1998 年第 25 號第 2 條修訂)
司法機構政務長轄下所有法院與審裁處的登記處及行政辦事處。(由 1996 年第 155 號法律公告代替)
民政事務總署。(由 1997 年第 362 號法律公告修訂)
民航處。
† 民眾安全服務處(部門)。(由 1996 年第 155 號法律公告增補)
市區重建局。(由 2000 年第 63 號第 38 條代替)
平等機會委員會。(由 2001 年第 30 號第 19 條增補)
行政長官辦公室總務室。(由 1996 年第 155 號法律公告增補。由 1998 年第 25 號第 2 條修訂)
地政總署。(由 1993 年第 282 號法律公告增補)
投資推廣署。(由 2000 年第 152 號法律公告增補)
法定語文事務署。(由 1996 年第 155 號法律公告增補)
法律援助署。
房屋署。

^a 《2003 年教育重組(雜項修訂)條例》(2003 年第 3 號)自本附表第 I 部廢除“教育署”。相關的保留及過渡性條文見於該條例第 29 條。

† 請參閱載於第 518 章第 33(4)條的保留條文。

25. Transitional

A complaint under this Ordinance may be made in respect of matters which arose before the commencement of this Ordinance and for the purposes of section 10(1)(a) any time elapsing between the date of the enactment and the date of the commencement of this Ordinance (but not any time before the first of those dates) shall be disregarded.

SCHEDULE 1

[ss. 2 & 24]

ORGANIZATIONS TO WHICH THIS ORDINANCE APPLIES

PART I^a

(Amended 44 of 1994 s. 17; 74 of 1996 s. 9)

Agriculture, Fisheries and Conservation Department. (Replaced L.N. 331 of 1999)
Airport Authority. (Added L.N. 155 of 1996)
All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility. (Replaced L.N. 155 of 1996)
Architectural Services Department.
Audit Commission. (Amended L.N. 362 of 1997)
*Auxiliary Medical Service (department). (Added L.N. 155 of 1996. Amended 57 of 1997 s. 34)
Buildings Department. (Replaced L.N. 282 of 1993)
Census and Statistics Department.
†Civil Aid Service (department). (Added L.N. 155 of 1996. Amended 58 of 1997 s. 34)
Civil Aviation Department.
Civil Engineering Department. (Replaced L.N. 183 of 1992)
Civil Service Training and Development Institute. (Added L.N. 155 of 1996)
Companies Registry. (Added 8 of 1993 s. 28)
Correctional Services Department.
Customs and Excise Department.
Department of Health. (Added L.N. 414 of 1989)
Department of Justice. (Amended L.N. 362 of 1997)
Drainage Services Department. (Added L.N. 357 of 1989)
Electrical and Mechanical Services Department.
Employees Retraining Board. (Added L.N. 139 of 1999)
Environmental Protection Department.
Equal Opportunities Commission. (Added 30 of 2001 s. 19)
Fire Services Department.
Food and Environmental Hygiene Department. (Added 78 of 1999 s. 7)

^a “Education Department” was repealed from Part I of this Schedule by the Education Reorganization (Miscellaneous Amendments) Ordinance 2003 (3 of 2003). For the related saving and transitional provisions, see section 29 of the Ordinance.

* Please see the saving provisions contained in section 33(4) of Cap. 517.

† Please see the saving provisions contained in section 33(4) of Cap. 518.

拓展署。
 社會福利署。
 知識產權署。 (由1990年第236號法律公告增補)
 屋宇署。 (由1993年第282號法律公告代替)
 政府化驗所。
 政府物流服務署。 (由2003年第164號法律公告代替)
 政府飛行服務隊。 (由1993年第242號法律公告增補)
 政府產業署。 (由1991年第181號法律公告增補)
 政府統計處。
 政府新聞處。
 政府總部。 (由1998年第25號第2條修訂)
 食物環境衛生署。 (由1999年第78號第7條增補)
 律政司。 (由1997年第362號法律公告修訂)
 香港天文台。 (由1998年第25號第2條修訂)
 香港考試及評核局。 (由2002年第23號第27條代替)
 香港房屋事務委員會。 (由1994年第44號第17條增補)
 香港房屋協會。 (由1996年第155號法律公告增補)
 香港金融管理局。 (由1993年第97號法律公告增補)
 香港海關。
 香港康體發展局。 (由1999年第139號法律公告增補)
 香港電台。
 香港藝術發展局。 (由1995年第26號第20條增補)
 建築署。
 個人資料私隱專員。 (由2001年第30號第19條增補)
 消防處。
 海事處。
 庫務署。
 破產管理署。 (由1992年第183號法律公告增補)
 差餉物業估價署。
 強制性公積金計劃管理局。 (由1999年第139號法律公告增補)
 郵政署。
 規劃署。 (由1989年第414號法律公告增補)
 康樂及文化事務署。 (由1999年第78號第7條增補)
 勞工處。
 稅務局。
 渠務署。 (由1989年第357號法律公告增補)
 路政署。
 資訊科技署。 (由1989年第373號法律公告增補)
 電訊管理局。 (由1993年第242號法律公告增補)
 運輸署。

General Office of the Chief Executive's Office. (Added L.N. 155 of 1996. Amended 25 of 1998 s. 2)
 Government Flying Service. (Added L.N. 242 of 1993)
 Government Laboratory.
 Government Logistics Department. (Replaced L.N. 164 of 2003)
 Government Property Agency. (Added L.N. 181 of 1991)
 Government Secretariat.
 Highways Department.
 Home Affairs Department. (Replaced L.N. 155 of 1996)
 Hong Kong Arts Development Council. (Added 26 of 1995 s. 20)
 Hong Kong Housing Authority. (Added 44 of 1994 s. 17)
 Hong Kong Housing Society. (Added L.N. 155 of 1996)
 Hong Kong Monetary Authority. (Added L.N. 97 of 1993)
 Hong Kong Sports Development Board. (Added L.N. 139 of 1999)
 Hospital Authority. (Added L.N. 420 of 1991)
 Hospital Services Department. (Added L.N. 414 of 1989)
 Housing Department.
 Immigration Department.
 Information Services Department.
 Information Technology Services Department. (Added L.N. 373 of 1989)
 Inland Revenue Department.
 Intellectual Property Department. (Added L.N. 236 of 1990)
 Invest Hong Kong. (Added L.N. 152 of 2000)
 Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service. (Added L.N. 253 of 2001)
 Kowloon-Canton Railway Corporation. (Added 44 of 1994 s. 17)
 Labour Department.
 Land Registry. (Added 8 of 1993 s. 28)
 Lands Department. (Added L.N. 282 of 1993)
 Legal Aid Department.
 Legislative Council Secretariat. (Replaced 14 of 1994 s. 24)
 Leisure and Cultural Services Department. (Added 78 of 1999 s. 7)
 Management Services Agency. (Added L.N. 383 of 1993)
 Mandatory Provident Fund Schemes Authority. (Added L.N. 139 of 1999)
 Marine Department.
 Observatory. (Amended 25 of 1998 s. 2)
 Office of the Telecommunications Authority. (Added L.N. 242 of 1993)
 Official Languages Agency. (Added L.N. 155 of 1996)
 Official Receiver's Office. (Added L.N. 183 of 1992)
 Planning Department. (Added L.N. 414 of 1989)
 Post Office.

僱員再培訓局。(由 1999 年第 139 號法律公告增補)
 管理參議署。(由 1993 年第 383 號法律公告增補)
 漁農自然護理署。(由 1999 年第 331 號法律公告代替)
 審計署。(由 1997 年第 362 號法律公告修訂)
 影視及娛樂事務管理處。
 衛生署。(由 1989 年第 414 號法律公告增補)
 機場管理局。(由 1996 年第 155 號法律公告增補)
 機電工程署。
 選舉事務處。(由 1994 年第 251 號法律公告增補)
 環境保護署。
 職工會登記局。
 職業訓練局。(由 1996 年第 155 號法律公告增補)
 醫院事務署。(由 1989 年第 414 號法律公告增補)
 醫院管理局。(由 1991 年第 420 號法律公告增補)
 * 醫療輔助隊(部門)。(由 1996 年第 155 號法律公告增補)
 證券及期貨事務監察委員會。(由 1994 年第 44 號第 17 條增補)
 懲教署。

(由 1989 年第 76 號法律公告修訂；由 1989 年第 373 號法律公告修訂；由 1993 年第 8 號第 28 條修訂；由 1999 年第 78 號第 7 條修訂；由 2000 年第 13 號第 65 條修訂；由 2000 年第 152 號法律公告修訂；由 2000 年第 63 號第 38 條修訂；由 2001 年第 253 號法律公告修訂；由 2003 年第 3 號第 28 條修訂；由 2003 年第 164 號法律公告修訂)

第 II 部

公務員敘用委員會秘書處。
 投訴警方獨立監察委員會秘書處。
 香港輔助警隊。(由 1998 年第 25 號第 2 條修訂)
 香港警隊。(由 1998 年第 25 號第 2 條修訂)
 廉政公署。(由 1997 年第 362 號法律公告修訂)

(第 II 部由 1996 年第 74 號第 9 條增補)

附表 1A

[第 3(7)、18(a) 及 24 條]

專員的財務事宜等

1. 專員的資源

專員的資源計有——

(a) 經立法會根據本條例第 6(3) 條通過的所有撥款；

* 請參閱載於第 517 章第 33(4) 條的保留條文。

Privacy Commissioner for Personal Data. (Added 30 of 2001 s. 19)
 Radio Television Hong Kong.
 Rating and Valuation Department.
 Registration and Electoral Office. (Added L.N. 251 of 1994)
 Registry of Trade Unions.
 Securities and Futures Commission. (Added 44 of 1994 s. 17)
 Social Welfare Department.
 Technical Education and Industrial Training Department.
 Television and Entertainment Licensing Authority.
 Territory Development Department.
 The Hong Kong Examinations and Assessment Authority. (Replaced 23 of 2002 s. 27)
 Trade and Industry Department. (Replaced L.N. 173 of 2000)
 Transport Department.
 Treasury.
 University Grants Committee, Secretariat. (Amended L.N. 35 of 1995)
 Urban Renewal Authority. (Replaced 63 of 2000 s. 38)
 Vocational Training Council. (Added L.N. 155 of 1996)
 Water Supplies Department.

(Amended L.N. 76 of 1989; L.N. 373 of 1989; 8 of 1993 s. 28; 78 of 1999 s. 7; 13 of 2000 s. 65; L.N. 152 of 2000; 63 of 2000 s. 38; L.N. 253 of 2001; 3 of 2003 s. 28; L.N. 164 of 2003)

PART II

Independent Commission Against Corruption.
 Hong Kong Auxiliary Police Force. (Amended 25 of 1998 s. 2)
 Hong Kong Police Force. (Amended 25 of 1998 s. 2)
 Secretariat of the Independent Police Complaints Council.
 Secretariat of the Public Service Commission.

(Part II added 74 of 1996 s. 9)

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) 所有其他款項及財產，包括專員所收的費用、利息及累積的收益。

2. 盈餘資金的投資

(1) 在符合第(2)款的規定下，專員可將他非即時需支用的資金投資。

(2) 專員依據第(1)款將資金投資的方式，必須得到行政署長經諮詢財經事務及庫務局局長後給予的批准。(由2002年第106號法律公告修訂)

3. 專員的帳目、審計及年報

(1) 專員須安排就其所有財務往來備存妥善的帳目。

(2) 在財政年度完結後，專員須在切實可行範圍內盡快擬備專員的帳目的報表，報表須包括收支結算表及資產負債表。

(3) 專員須委任一名核數師，而在財政年度完結後，該核數師須在切實可行範圍內盡快審計第(1)款規定的帳目及第(2)款規定的帳目報表，並就該報表向專員提交報告。

(4) 在財政年度完結後，專員須在切實可行範圍內盡快(在任何情況下須在財政年度完結後的6個月內)將以下文件提交行政長官，而行政長官須安排將之提交立法會省覽——

- (a) 一份專員的工作的報告，報告須全面概述在專員職能範圍內的事務在該年度內的發展；
- (b) 第(2)款規定的帳目報表的文本；及
- (c) 核數師就該報表所作的報告。

4. 審計署署長的審核

(1) 審計署署長可就任何財政年度，對專員在執行其職能及行使其權力時使用其資源是否合乎經濟原則及講求效率及效驗的情況進行審核。

(2) 在符合第(3)款的規定下，審計署署長有權在任何合理時間，查閱他為根據本條進行的審核而可能合理地需要的一切文件，並有權要求持有該等文件的人或對該等文件負責的人提交他認為為該目的而合理地需要的資料及解釋。

(3) 第(2)款只適用於專員所保管和控制的文件。

(4) 審計署署長可向立法會主席報告關於他根據本條進行的審核的結果。

(5) 第(1)款的施行不得令審計署署長有權質疑專員的政策目標是否可取。

5. 豁免繳稅

(1) 專員獲豁免繳付根據《稅務條例》(第112章)徵收的稅項。

(2) 為免生疑問，現宣布第(1)款不適用於本條例第3(6)條提述的由政府一般收入撥付的薪金或其他利益，亦不就該等薪金或其他利益而適用。

(附表1A由2001年第30號第20條增補)

(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 Financial Services and the Treasury, approves. (Amended L.N. 106 of 2002)

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.

(Schedule 1A added 30 of 2001 s. 20)

附表 2

[第 8 條]

不受調查的行動

1. 在行政長官證明會影響香港保安、防衛或國際關係(包括與任何國際組織的關係)的事情上所作的行動。(由 1998 年第 25 號第 2 條修訂)
2. 在香港任何法庭或審裁處的任何民事或刑事法律程序的展開或進行,包括是否為任何罪行檢控任何人的決定。(由 1997 年第 80 號第 102 條修訂)
3. 行政長官行使權力,赦免被裁定犯了刑事罪行的人或改判這些人的刑罰。(由 1998 年第 25 號第 2 條代替)
4. 在合約或其他商業交易上所作的行動,但不包括招標、確定投標人資格及挑選中標人時採取的程序。
5. 與以下項目有關的任免、薪酬、服務條件、紀律、退休金、離職金或其他人事問題上所作出的行動——
 - (a) 在政府或任何機構的職位或受僱工作中服務;或
 - (b) 在任何職位或根據任何服務合約而提供服務,而就該項服務作出與上述各問題有關的行動的權力,或決定採取或批准採取該行動的權力,是賦予行政長官或任何機構者。(由 1994 年第 44 號第 18 條修訂;由 1998 年第 25 號第 2 條修訂)
6. 在政府授與權內頒賜勳銜、獎賞或特權。(由 1998 年第 25 號第 2 條修訂)
7. 行政長官親自作出的行動。(由 1998 年第 25 號第 2 條修訂)
8. 關乎政府土地權益的批出、延期或續期條件的施加或更改的決定。(由 1994 年第 44 號第 18 條增補;由 1998 年第 25 號第 2 條修訂;由 1998 年第 29 號第 105 條修訂)
9. 與證券及期貨事務監察委員會所印發的「香港公司收購、合併及股份購回守則」有關的任何行動。(由 1994 年第 44 號第 18 條增補)
10. 廉政公署、香港輔助警隊或香港警隊就防止、偵查或調查任何刑事罪或罪行而作出的行動,不論該行動是否由其中任何一個機構單獨作出,或是由其中多於一個的機構共同作出或由其中任何一個或多於一個的機構與任何其他機構或人士共同作出。(由 1996 年第 74 號第 10 條增補;由 1997 年第 362 號法律公告修訂;由 1998 年第 25 號第 2 條修訂;由 2002 年第 23 號第 126 條修訂)

SCHEDULE 2

[s. 8]

ACTIONS NOT SUBJECT TO INVESTIGATION

1. Any action taken in matters certified by the Chief Executive as affecting security, defence or international relations (including relations with any international organization) in respect of Hong Kong. (Amended 25 of 1998 s. 2)
2. The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Hong Kong, including any decision whether or not to prosecute any person for an offence.
3. Any exercise of the power by the Chief Executive to pardon persons convicted of criminal offences or commute their penalties. (Replaced 25 of 1998 s. 2)
4. Any action taken in relation to contractual or other commercial transactions but excluding procedures adopted in inviting tenders, determining the qualification of persons entitled to tender and the selection of the successful tenderer.
5. Any action taken in respect of appointments or removals, pay, conditions of service, discipline, pension, superannuation or other personnel matters, in relation to—
 - (a) service in any office or employment under the Government or under any organization; or
 - (b) service in any office, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in the Chief Executive or any organization. (Amended 44 of 1994 s. 18; 25 of 1998 s. 2)
6. The grant of honours, awards or privileges within the gift of the Government. (Amended 25 of 1998 s. 2)
7. Any action taken personally by the Chief Executive. (Amended 25 of 1998 s. 2)
8. Any decision concerning the imposition or variation of any condition of granting, extending or renewing any interest in Government land. (Added 44 of 1994 s. 18. Amended 25 of 1998 s. 2; 29 of 1998 s. 105)
9. Any action taken in relation to the Hong Kong Codes on Takeovers and Mergers and Share Repurchases issued by the Securities and Futures Commission. (Added 44 of 1994 s. 18)
10. Any action taken by the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force or the Hong Kong Police Force in relation to the prevention, detection or investigation of any crime or offence, whether or not the action is taken solely by any one of these organizations, or jointly by more than one of these organizations or by any one or more of them together with any other organizations or persons. (Added 74 of 1996 s. 10. Amended 25 of 1998 s. 2)