

**Bills Committee on
Independent Police Complaints Council Bill**

**Response to issues raised at the Bills Committee meetings
held on 5, 6, 10 and 12 June 2008 (1)**

Purpose

This note provides information in response to the issues raised by the Bills Committee at its meetings held on 5, 6, 10 and 12 June 2008.

Long title

To consider deleting “observing” in the long title of the Bill

2. We have no objection to deleting “observing” in the long title of the Bill and have already submitted a draft Committee Stage Amendment for this purpose for Members’ consideration (see LC Paper No. CB(2)2256/07-08(01)).

Members of the police force

To consider amending “attached to” in the definition of “member of the police force” in clause 2

3. The dictionary meaning of the word “attach” is “join or connect functionally to”. Applying this meaning, the definition of “member of the police force” as including “a public officer attached to the police force” would capture police officers of all ranks of the Hong Kong Police Force and auxiliary police officers of all ranks of the Hong Kong Auxiliary Police Force, civilian staff of the police departmental grade and other civilian staff of the Government working in the Hong Kong Police Force (including civilian staff employed on non-civil service contract terms).

4. Members have suggested that the definition should make reference to the establishment of the police force. However, as the establishment of the police force does not cover staff employed on non-civil service contract terms, who should be regarded as members of the police force, we propose no amendment to the definition.

Secretary to the Independent Police Complaints Council (IPCC)

To provide information on whether the appointment of the executive heads of the Consumer Council, Urban Renewal Authority and Hong Kong Trade Development Council is subject to the approval of the Chief Executive (CE), and to clarify whether the statutory IPCC would seek CE's approval of the terms of employment of the Secretary under clause 5(1) before identifying the suitable candidates

5. For the positions of the chief executive of the Consumer Council, the Managing Director of the Urban Renewal Authority and the Executive Director of the Hong Kong Trade Development Council, the appointment of the post-holders as well as their terms of employment are subject to CE's approval. The relevant provisions of the Ordinances concerned are at Annex A.

6. As far as the IPCC is concerned, clause 5(1) only requires that the terms of employment of its Secretary (to be re-titled as "Secretary General") and Legal Adviser to be approved by CE. The IPCC enjoys the discretion and flexibility in selecting suitable candidates for the two positions. It is up to the IPCC to decide whether to seek CE's approval of the terms of employment before identifying candidates.

Mentally incapacitated complainants

To provide information on how the Police handle complaints made by persons who are representatives of mentally incapacitated persons

7. As we have explained in LC Paper No. CB(2)1689/07-08(02), clause 14 of the Bill provides that if a complainant is a mentally incapacitated person, his relative or guardian (as defined in section 2(1)

of the Mental Health Ordinance (Cap. 136)) may make the complaint on behalf of the complainant. Under the existing practice, the Police will judge whether a complainant is a mentally incapacitated person in accordance with the definition of “mentally incapacitated person” under Cap. 136 (i.e. a person who is mentally disordered or mentally handicapped within the meaning of Cap. 136, and Cap. 136 does not require such assessment to be supported by any documentary proof). It is for the complainant’s representative to substantiate that he is a relative or guardian of the complainant so that his complaint made on behalf of the complainant will be treated as a reportable complaint in accordance with clause 14. While at present, the Police have not drawn up detailed written guidelines on the handling of complaints made by persons who are representatives of mentally incapacitated persons, they are prepared to draw up such guidelines.

Observers Scheme

To consider revising clause 32 along the line of “to assist the Council in monitoring ... by observing ...”

8. Clause 7(1)(a) stipulates that one of the IPCC’s functions is to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Police. An observer’s function is to assist the IPCC to observe the manner in which the Police handle or investigate reportable complaints. Clause 32, as currently drafted, accurately reflects this. We therefore do not consider it necessary to amend clause 32.

To clarify what constitutes “other sufficient cause” in clause 3 in Schedule 2; to consider providing that the removal of an observer should be endorsed by CE

9. Clause 3 in Schedule 2 provides that the Secretary for Security (S for S) may remove an observer from office if S for S is satisfied that the observer is -

- (a) unable or unfit to perform his functions due to permanent incapacity; or

- (b) unable or unfit to perform his functions due to other sufficient cause.

In other words, if S for S removes an observer on the basis of paragraph (b) above, he must be satisfied that such cause sufficiently substantiates that the observer is unable or unfit to perform his functions. The same test applies to the removal of the IPCC Chairman, Vice-Chairman or member under clause 3 in Schedule 1. Similar arrangements apply to many existing statutory bodies such as the Consumer Council, the Supplementary Medical Professions Council, the Employees Retraining Board and the Airport Authority (see relevant legislative provisions at Annex B).

10. As S for S is the authority for appointing observers under clause 31, we consider it appropriate to provide that S for S has the power to remove observers under clause 3 in Schedule 2. We do not see a need for such removal to be endorsed by CE.

To consider the appropriate authority for approving the fees and allowances to be paid to the IPCC observers, by making reference to the arrangements for existing statutory bodies

11. Clause 4 in Schedule 2 provides that the IPCC may pay the observers such fees and allowances as S for S approves. As the Administration (specifically S for S) is the authority for appointing observers, we consider it appropriate for the fees and allowances payable to observers to be approved by the Administration (specifically S for S as provided for under the Bill). Similar arrangement (i.e. the rates of fees and allowances payable to members of committees/panels established under statutory bodies are determined by the Administration) applies to the fees and allowances payable to members of the Appeal Board of the Urban Renewal Authority^{Note 1} and members of the Complaints Committee of the Broadcasting Authority^{Note 2}.

^{Note 1} Section 27(21) of the Urban Renewal Authority Ordinance (Cap. 563) provides that “The Chairman and the members of an Appeal Board may be paid such remuneration and allowances as the Financial Secretary may determine.”

^{Note 2} Although there are no specific provisions in the Broadcasting Authority Ordinance (Cap. 391) on the payment of honorarium to members of the Complaints Committee, the existing practice is that the current rate of honorarium payable to such members is determined by the Commissioner for Television and Entertainment Licensing.

To provide information on how observers are being notified of the Police's interviews and collection of evidence; statistics on the interviews/collection of evidence which the Police have notified the IPCC in the past 2 years and on the observers' attendance at such interviews/collection of evidence; statistics on the number of surprise visits in the past 2 years; statistics on the reports of the observers which indicated irregularities in the past 2 years; the procedures applicable to observers and the form to be completed by observers after conducting an observation; statistics on the interest being declared by observers; and whether observers may conduct observation before a complaint is made or before a complaint is being categorized

12. According to the IPCC Secretariat, observers may specify their preference, for example, to conduct observations on a round-the-year basis or observations held in a particular district. If they do not indicate any preference, they will be on duty in accordance with a roster. Observers are issued with identity cards, and the Police are provided with a list of the serving observers for verification. Complaint investigators of the Police use a standard form (see Annex C) to notify the IPCC Secretariat by fax of all scheduled interviews with complainants, complainees and witnesses as well as occasions of collection of evidence once the dates, time and venues are known. On receipt of the notification, the IPCC Secretariat will inform duty observers and relevant observers (who have specified their preference for conducting observations as afore-mentioned) of the appointments by fax. The IPCC Secretariat will draw observers' attention to observation occasions involving complaints of a serious nature (e.g. those involving allegations of assault and/or fabrication of evidence) or complaints being monitored by the IPCC Serious Complaints Committee.

13. If two (or more) observers indicate interest in conducting scheduled observation on the same interview/occasion of collection of evidence, the IPCC Secretariat will invite the observer who indicates his interest later than the other observer to consider attending another observation session. Such coordination effort does not apply to surprise observation as observers are not required to give prior notice to the IPCC Secretariat of their intention to conduct such observations.

14. For scheduled observations, the IPCC Secretariat will notify the responsible complaint investigators (or conciliating officers for informal resolution cases) of the observers' attendance by fax as soon as practicable. In the event of any change to the scheduled sessions (e.g. the date/time/venue is changed), the relevant police formation will notify the observer concerned and/or the IPCC Secretariat of the change by telephone and by fax as soon as possible.

15. After making a scheduled or surprise observation, an observer is required to complete a report (see LC Paper Nos. CB(2)2196/07-08(01) and (02)) and return it to the IPCC Secretariat. The IPCC Secretariat will examine the report and then forward it to the Complaints Against Police Office (CAPO) for necessary follow-up action. The observer will be apprised of the comments of, or follow-up actions taken by, the Police in response to his report.

16. Before the observers attend the observation sessions, the IPCC Secretariat will draw the observers' attention to the following important points -

- (a) Confidentiality - To comply with the requirements of the Personal Data (Privacy) Ordinance, observers are required to keep all information acquired in the course of the observation confidential. Information so obtained must not be released to any other party except the IPCC;
- (b) Neutrality - To ensure that all investigations into complaints against the Police are conducted in a fair and impartial manner, observers must not interfere with the conduct of interviews/site visits (e.g. by posing questions to interviewer/interviewee during the statement-taking sessions, initiating discussions, expressing personal views or displaying any other mode of behavior deemed inappropriate in the circumstances);
- (c) Declaration of interest - When an observer has a potential conflict of interest in an observation session (e.g. when the complainant or complainee or interviewee is a close relative/friend of the observer), he is required to make full

disclosure of his interest to the complaint investigator/conciliating officer in charge of the interview/site visit as well as the interviewee before the observation takes place. The observer is also required to record a declaration of interest in his report.

17. The function of observers is to assist the IPCC to observe whether the Police handle or investigate reportable complaints in a fair and impartial manner. Before a member of the public formally lodges a complaint or before a complaint is categorized, a case is dealt with by the Police in accordance with established procedures. As we have set out in LC Paper No. CB(2)810/07-08(01), the Police have drawn up guidelines and procedures for dealing with public complaints. Any breach of such guidelines and procedures may result in disciplinary actions against the police officers concerned. With the foregoing, we do not consider it necessary for observers to conduct observations before a complaint is formally lodged or before a complaint is being categorized.

18. Statistics in respect of observers' observations are set out at Annex D.

To consider setting out in the Bill that the Police must notify the IPCC of all interviews and collection of evidence before they are conducted

19. Having considered Members' comments, we propose to add a provision to the effect that the Police must notify the IPCC of all interviews and collection of evidence before they are conducted.

To consider replacing "it comes to the knowledge" in clause 34(3) along the lines of "it appears" in relation to the requirement for IPCC observers to disclose interest

20. We have no objection to replacing "it comes to the knowledge of the observer that he has an interest in the reportable complaint" in clause 34(3) along the line of "it appears to the observer that he has an interest in the reportable complaint".

To consider providing information to the observers on how an observation should be conducted; to consider publishing the procedures applicable to the IPCC Observers Scheme and improving such procedures; to consider not obliging observers to provide an opinion on whether an interview or collection of evidence has been conducted in a fair and impartial manner and to improve the form for completion by observers

21. We agree with Members that sufficient information should be provided to observers to facilitate their effective observation of the Police's interviews and collection of evidence. The IPCC Secretariat is reviewing the forms and procedures concerned (including whether and how such procedures are to be published) and will submit recommended improvements to the IPCC for endorsement in due course. CAPO will also work with the IPCC to provide additional familiarization briefings to observers on CAPO's handling and investigation of police complaints.

22. As set out in clause 32, the function of observers is to assist the IPCC to observe whether the Police handle or investigate reportable complaints in a fair and impartial manner. Clause 34(2)(a) reinforces this function by requiring an observer to state his opinion on whether an interview or collection of evidence has been conducted in a fair and impartial manner. If an observer has any doubts about the fairness or impartiality of the interview or collection of evidence that he observed, he is at liberty to state such an opinion in his report. We therefore propose no amendment to clause 34(2)(a).

To provide information on how an interviewee's objection to the presence of an observer would be handled

23. For the purpose of monitoring whether the Police handle and investigate reportable complaints in a fair and impartial manner, the acceptance by complainants, complainees and other witnesses of the presence of observers at the Police's interviews or collection of evidence is part and parcel of the system for the handling of public complaints against the Police. The Police will explain the arrangement for observations to the complainants when they lodge their complaints under this system. In the event that there are valid reasons for an interviewee to object to an observer's presence (e.g. for cases involving sexual

allegations), arrangements may be made to video-tape the interview for the observer's (or the IPCC's) observation. In other cases, an interviewee's objection to the presence of an observer may result in the interview being discontinued.

To consider revising clause 35(c) to spell out that the drawing up of a duty roster of the observers would not affect an observer's right to conduct observation when it is not his turn according to the duty roster

24. Clause 34(1) clearly empowers an observer to attend an interview conducted by the Police or observe the collection of evidence by the Police at any time and without prior appointment. Clause 35(c) provides that the IPCC may determine the drawing up of a duty roster for the observers. The purpose of the duty roster is to facilitate systematic organization of the observers' attendance at the interviews or occasions of evidence collection. Clause 35(c) does not affect an observer's power under clause 34(1). Having considered Members' comments, we will add a provision under clause 35 to expressly spell this out.

Clause 38 – Protection of the IPCC and its members

To clarify whether clause 38(1) would render a specified person not liable to any civil proceedings for any act done, or omitted to be done, by him in good faith in the performance or purported performance of a function under the Bill, even if he has acted negligently or if there is serious default; to clarify, with clause 38(1), whether the Administration would be liable for any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under the Bill

25. Under clause 38(1), a specified person enjoys immunity from civil liability in respect of act done, or omitted to be done in good faith in the performance or purported performance of a function under the Bill. The provision is not intended to cover negligent acts or serious default. "No action will lie for doing that which the legislature has authorized, if it be done without negligence ... but an action lies for doing what the legislature has authorized, if it be done negligently." (See *Greddis v. proprietors of Bann Reservoir* (1873)) In essence, this is a corollary of

the assumption that no statute can be expected to authorize any acts to be carried out negligently. There are existing legislative provisions stating expressly that the statutory protection covers acts done in good faith and without negligence (see Annex E). This shows that “in good faith” and “negligence” are inherently inconsistent concepts.

26. The question of whether the Administration has any liability for any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under the Bill is outside clause 38(1). The issue needs to be considered having regard to the circumstances of individual cases.

Clause 40 – Continuance of things done by existing IPCC

To explain why “to the extent that it is consistent with this Ordinance” is contained in clause 40(3) but not 40(2); to consider deleting “is required to be done” from clause 40(3)

27. Clause 40(2) covers anything done before the commencement of the Bill by, in relation to or on behalf of the existing IPCC. As the matters involved have already been completed before the establishment of the statutory IPCC, it is not practical to statutorily provide that only if those matters are consistent with the IPCC will their validity be unaffected by the enactment of the Bill. Clause 40(3), on the other hand, covers things that immediately before the commencement of the Bill, are required to be done or are in the process of being done by, in relation to or on behalf of the existing IPCC pursuant to or in connection with its functions. Since the matters involved have not yet commenced or have not yet been completed, if they are to be continued by, in relation to or on behalf of the statutory IPCC, it is necessary to ensure that they are consistent with the requirements under the Bill. On such considerations, the provision of “to the extent that it is consistent with this Ordinance” is in clause 40(3) should be retained, but we have no objection to deleting “is required to be done”.

The IPCC's proceedings and other miscellaneous matters

To provide information on how maladministration is currently being handled by the IPCC and to provide statistics on maladministration cases in the past three years

28. According to the IPCC Secretariat, it has not received any maladministration complaints in the past three years. If such a complaint is received, the IPCC Secretariat will look into the facts of the cases and cooperate fully with the investigation authority concerned to facilitate a comprehensive investigation of the case.

To provide information on the required quorum for meetings of existing statutory bodies and to consider the appropriate quorum for the statutory IPCC

29. The quorum of meetings of existing statutory bodies as specified in their respective governing Ordinances varies. For some bodies such as the Equal Opportunities Commission (see section 6(1) in Schedule 6 in the Sex Discrimination Ordinance (Cap. 480)), the Urban Renewal Authority (see section 3(1) in the Schedule in the Urban Renewal Authority Ordinance (Cap. 563)) and the Construction Industry Council (see section 4(1) in Schedule 3 in the Construction Industry Council Ordinance (Cap. 587)), the quorum of their meetings is calculated by a certain proportion (e.g. half) of the total number of their members. For other bodies such as the Hong Kong Examinations and Assessment Authority (see section 3(10) in the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261)), the Consumer Council (see section 7(2)(a) in the Consumer Council Ordinance (Cap. 216)) and the Broadcasting Authority (see section 6(2)(a) in the Broadcasting Authority Ordinance (Cap. 391)), the quorum of their meetings is calculated by a certain number of their members. The quorum of six members for a meeting of the IPCC as stipulated in clause 8 in Schedule 1 reflects the existing established practice. We therefore propose no amendment to it.

To consider specifying that in the absence of the Chairman, it should be for a Vice-chairman of the IPCC to decide on the time and place for the IPCC to meet

30. Clause 7(2) in Schedule 1 provides that the IPCC Chairman may appoint the time and place for the IPCC to meet. Clause 12 empowers the IPCC to determine its own procedure, including who may appoint the time and place for the IPCC to meet in the absence of the Chairman. Having considered Members' comments, we propose consolidating the two clauses by providing under clause 7(2) that the IPCC Chairman may determine who should decide on the time and place for the IPCC to meet in his absence, and deleting the reference to such matter in clause 12.

To consider specifying in clause 13 in Schedule 1 that the IPCC's committees, panels or sub-groups should consist of IPCC members only

31. Our intention is that the IPCC's committees, panels or sub-groups should consist of IPCC members only. We will amend clause 13 in Schedule 1 to spell this out more clearly.

To consider whether it is necessary to provide for "such further period as the Chief Executive may allow" in clause 23(1) in Schedule 1, taking into account the reporting period of existing statutory bodies

32. It is envisaged that the IPCC would rarely need more than six months to submit its annual report and copies of the statement of accounts and auditor's report to the CE. The provision of "such further period as the Chief Executive may allow" in clause 23(1) in Schedule 1 serves to cater for exceptional circumstances which render the IPCC unable to submit the documents concerned to CE within six months after the end of a financial year. Similar arrangements are made for many existing statutory bodies such as the Hong Kong Examinations and Assessment Authority (see section 11(2) in Cap. 261), the Construction Industry Council (see section 27 in Cap. 587) and the Wages on Insolvency Fund Board (see section 13(1) in the Protection of Wages on Insolvency Ordinance (Cap. 380)).

To consider spelling out the content of the annual report of the IPCC in clause 23 in Schedule 1

33. Clause 23 in Schedule 1 provides that the IPCC must submit to a report on the performance of its statutory functions for each financial year. The IPCC's functions are clearly stipulated in clause 7 of the Bill. Clause 23 in Schedule 1 provides flexibility for the IPCC to determine the contents of its annual report for illustrating how it has carried out its functions in monitoring the Police's handling and investigation of reportable complaints. Similar flexibility is provided to, for example, The Ombudsman, the Privacy Commissioner for Personal Data and the Equal Opportunities Commission under their respective governing Ordinances.

To explain the rationale of clause 23(2) in Schedule 1 that the tabling of the IPCC's annual report at the Legislative Council (LegCo) is subject to CE's approval

34. As the IPCC is appointed by CE to monitor if the Police have handled reportable complaints fairly and impartially, the IPCC's annual reports and accounts should be scrutinized by CE for ensuring if the IPCC has discharged its functions. We believe the possibility for CE to disapprove the tabling of the reports at LegCo is very low. Nonetheless, we still have to provide for such eventuality (e.g. if CE spots any substantial factual discrepancy in the reports).

To clarify the rationale for setting out the provisions on the Director of Audit's examination in clause 24 in Schedule 1

35. Clause 24 in Schedule 1 clearly sets out the powers of the Director of Audit to examine the economy, efficiency and effectiveness with which the IPCC has expended its resources in performing its functions. It has taken reference from similar provisions in the governing Ordinances of many existing statutory bodies such the Employees Compensation Assistance Board (see section 14 in the Employees Compensation Assistance Ordinance (Cap. 365)), the Employees Retraining Board (see section 12 in The Employees Retraining Board Ordinance (Cap. 423)), the Hong Kong Institute of Education (see section 20 in the Hong Kong Institute of Education

Ordinance (Cap. 444)), the Occupational Deafness Compensation Board (see section 10 in the Occupational Deafness (Compensation) Ordinance (Cap. 469)) and the Vocational Training Council (see section 19A in the Vocational Training Council Ordinance (Cap. 1130)).

Contractors engaged by the Police

To advise on the major police duty related tasks performed by contractors engaged by the Police and how complaints involving such contractors are handled

36. The major police duty related tasks performed by contractors engaged by the Police include removal of vehicles, removal of signboards, transportation of mills barriers, provision of persons for identification parades and provision of security service. The following examples show how complaints involving such contractors are handled -

Removal of vehicles

- (a) An unattended private car was illegally parked on the pavement outside a fire station and was to be removed under the direction of a police officer for obstruction of emergency vehicles. The driver of the private car returned to the scene and found his car being connected to the tow hook by the contracted towing agent. He complained that the police contractor towed his car without prior warning or notification. As the towing operation was authorized by a police officer at the scene, this is a complaint against police operational matters and will be dealt with as a reportable complaint;
- (b) An unattended private car was illegally parked on the pavement outside a fire station and was to be removed under the direction of a police officer for obstruction of emergency vehicles. The driver of the private car returned to the scene and found his car being connected to the tow hook by the contracted towing agent. He asked the driver of the tow truck to stop the operation and was allegedly sworn at by the truck driver. He lodged a complaint of rudeness against the employee of the police

contractor. With the complainant's agreement, such complaint against the manner/conduct of the contractor's employee will be referred to the contractor for necessary follow up. The contractor's performance will be monitored in accordance with the existing procedures.

Removal of signboards

- (c) In a police anti-crime operation, some vice signboards were to be seized. As the police contractor was not provided with specific directions on which specific signboards were to be removed, he dismantled, amongst the vice signboards, an illuminated sign that bore no advertisement of sex services. The owner of the said illuminated sign lodged a complaint against the police. This is an allegation of "neglect of duty" against the police and will be dealt with as a reportable complaint.
- (d) A female made a complaint that she was teased by an employee of the police contractor who was dismantling a vice signboard in her neighbourhood. With the complainant's agreement, such complaint of misconduct against the contractor's employee will be referred to the contractor for necessary follow up. The contractor's performance will be monitored in accordance with the existing procedures.

Transportation of mills barriers

- (e) At a major event, the Police were to deposit mills barriers at certain locations to enforce road closures and manage crowds. When the police contractor positioned the barriers at specific locations under the direction of the police officer-in-command of the crowd management operation, the owner of a newspaper stall made a complaint of obstruction caused to his stall. As the complaint was about the direction given by the police officer, it will be dealt with as a reportable complaint under the police complaint system.
- (f) At a major event, the Police were to deposit mills barriers at certain locations to enforce road closures and manage crowds.

When the employees of the police contractor positioned the barriers at a specific location, they had a dispute with a shopkeeper who subsequently made a complaint that the police contractor's employees had uttered abusive language at him. With the complainant's agreement, such complaint against the manner/conduct of the contractor's employee will be referred to the contractor for necessary follow up. The contractor's performance will be monitored in accordance with the existing procedures.

Provision of persons for identification parades

- (g) An identification parade was held for a witness to identify a suspect. After the parade, the suspect lodged a complaint that the parade was not fair as his "crew cut" had been so conspicuous among the actors provided by the police contractor. As both the officer-in-charge of the case and the officer-in-charge of the parade were responsible for the fairness of the parade, the complaint will be dealt with as a reportable complaint.
- (h) After an identification parade was held, the suspect lodged a complaint that one of the actors provided by the police contractor for the parade had teased him and made critical remarks. With the complainant's agreement, such complaint against the manner/conduct of the actor will be referred to the contractor for necessary follow up. The contractor's performance will be monitored in accordance with the existing procedures.

Provision of security service

- (i) A visitor to the Police Headquarters refused to produce his identity card for registration on demand of a security officer (provided by the Police's security contractor) and lodged a complaint against the security officer for unauthorized use of his authority. As the employee of the security contractor performed his function as required by the Police Headquarters, this is a complaint against the police and will be dealt with as a reportable complaint.

- (j) A visitor to the Police Headquarters lodged a complaint that a security officer (provided by the Police's security contractor) had been impolite to him. With the complainant's agreement, such complaint against the manner/conduct of the employee of the security contractor will be referred to the contractor for necessary follow up. The contractor's performance will be monitored in accordance with the existing procedures.

37. Any claims for damages lodged by a complainant against the Police or a contractor of the Police will be handled in accordance with established procedures. Any liability of the Police or the contractor will be considered on the basis of the circumstances pertaining to each individual case.

Security Bureau
June 2008

**Appointment of the executive heads of the
Consumer Council, the Urban Renewal Authority
and Hong Kong Trade Development Council**

(A) Consumer Council

Section 10(1), (4) and (5) of the Consumer Council Ordinance (Cap. 216 provide that -

“(1) Subject to subsection (4), the Council shall appoint a person to hold office as its chief executive.

(4) The Council shall obtain the prior approval of the Chief Executive to-

- (a) any appointment proposed to be made under subsection (1) and the terms and conditions thereof;
- (b) the suspension or dismissal of its chief executive;
- (c) the salary or salary scale (including allowances and other pecuniary benefits) and conditions of employment applicable to its chief executive and every other employee or class of employee, and any variation thereof.

(5) No person shall be employed by the Council otherwise than on the salary or salary scale or on the conditions of employment applicable to that person approved by the Chief Executive under subsection (4).”

(B) Urban Renewal Authority

Section 4(1) and (2) of the Urban Renewal Authority Ordinance (Cap. 563) provides that -

“(1) There shall be established a Board to be named the Board of the Urban Renewal Authority comprised of the following members-

- (a) a Chairman of the Board of the Authority ("the Chairman"), who is at the same time a non-executive director and is not a

public officer;

(b) a Managing Director of the Authority ("the Managing Director"), who is at the same time an executive director and is not a public officer;

(c) 2 other executive directors, not being public officers;

(d) not less than 7 other non-executive directors, not being public officers; and

(e) 4 other non-executive directors who are public officers.

(2) All members of the Board of the Authority, including the Chairman, shall be appointed by the Chief Executive for a term not exceeding 3 years.”

Section 1(2) in the Schedule to Cap. 563 provides that -

“An executive director, including the Managing Director, shall hold office on such terms and conditions of appointment, including remuneration and allowances, as the Chief Executive may from time to time determine in respect of an executive director.”

(C) Hong Kong Trade Development Council

Section 19 of the Hong Kong Trade Development Council Ordinance (Cap. 1114) provides that -

“No person shall be appointed by the Council to the office of Executive Director-

(a) without the prior consent of the Chief Executive; and

(b) except upon such terms and conditions of service as are approved by the Chief Executive.”

**Legislative provisions on removal of members of the
Consumer Council, the Supplementary Medical Professions Council,
the Employees Retraining Board and the Airport Authority**

(A) Consumer Council

Section 6(3) of the Consumer Council Ordinance (Cap. 216) provides that

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“The Chairman, Vice-Chairman and any other member appointed¹ under subsection (1)(c) may at any time-

- (a) resign his office by notice to the Chief Executive; or
- (b) be removed therefrom by the Chief Executive for permanent incapacity or other sufficient cause,

and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.”

(B) Supplementary Medical Professions Council

Section 3(3) of the Supplementary Medical Professions Ordinance (Cap. 359) provides that -

“Any member appointed² under subsection (1)(d) or reappointed² under subsection (2) may before the expiry of his term of office-

- (a) resign his office by notice to the Chief Executive; or
- (b) be removed from office by the Chief Executive for permanent incapacity or other sufficient cause (as to the existence of which the decision of the Chief Executive shall be final),

and upon such resignation or removal the term for which he was appointed or reappointed shall be deemed to have expired.”

¹ The authority for such appointments is the Chief Executive.

² The authority for such appointments is the Chief Executive.

(C) Employees Retraining Board

Section 3(2) in Schedule 1 to the Employee Retraining Ordinance (Cap. 423) provides that -

“Any member appointed³ under section 3(2)(a) of this Ordinance may at any time-

(a) resign his office by notice in writing to the Chief Executive;

or

(b) be removed from office by the Chief Executive for permanent incapacity or other sufficient cause,

and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.”

(D) Airport Authority

Section 11(6)(a) of the Airport Authority Ordinance (Cap. 483) provides that -

“Subject to subsection (3), a member⁴ of the Authority may be removed from office by the Chief Executive for permanent incapacity or other sufficient cause (as to the existence of which the Chief Executive's decision shall be final).”

³ The authority for such appointments is the Chief Executive.

⁴ The authority for such appointments is the Chief Executive.

5/03

2/05

From : _____ To : Secretary, IPCC
(_____) Attn : AS(PS)1
Ref. : CAPO _____ CRR RN _____ Fax : 2525 8042
Tel. : _____ (Fax : _____) Tel. : 2862 8261 / 2862 8201
Date : _____

IPCC Observers Scheme

Part A

Type of case : *Informal Resolution (IR) case* *Non-IR case*
(a) Face-to-face interview (a) Interview
(b) Telephone contact (b) Site visit
(Hands-free telephone set: Yes/No*)

Part B

Nature of Allegation(s) : _____

Particulars of Interview/Site Visit*

Date : _____ Time : _____
Place : _____
Occasion : First interview Subsequent Interview
Ask for review interview IPCC query interview
Others (e.g. change in appointment and reason for the change, estimated time of interview) _____

Particulars of Interviewee

Name : _____ Sex : M / F*
Age : _____ Occupation : _____
Status : COM / COMEE / COM Witness / COMEE Witness / Other*

Particulars of Interviewer/CO* (also include name and contact number of OC Case)

Name/Rank/Post: _____

Part C (To be completed by Secretary, IPCC and faxed to the originator)

IPCC Observer Attendance : Yes No
Name of Observer : _____
Contact telephone(s) : _____ Pager/Mobile : _____
Parking facility required/not required*. Car No.: _____

* Delete and tick whichever appropriate

**Statistics on observations conducted by IPCC observers
in 2006 and 2007**

(A) Interviews and collection of evidence in respect of which notification was issued by the Police to the IPCC and observers' observations of such interviews and collection of evidence

Year	Number of interviews and collection of evidence as notified by Police	Number of interviews and collection of evidence observed by observers
2006	2 085	317
2007	2 147	263

(B) Surprise observations conducted and reports of observers indicating irregularities

Year	Surprise observations conducted	Observers' reports indicating irregularities^{Note}
2006	0	9
2007	0	5

Note: Such irregularities included untidy and unsuitable setting for interview, interview conducted in a clumsy manner, failure to notify observer of the non-attendance of interviewee in a timely manner, interviewer regarded by the interviewee as being subjective (as a result of which the interview was assigned to another complaint investigator).

(C) Declaration of interest by observers

Year	Number of cases in which the observers declared an interest
2006	0
2007	2

**Examples of legislative provisions stating expressly
that statutory protection covers
acts done in good faith and without negligence**

(A) Bills of Exchange Ordinance (Cap. 19)

Section 80 provides that -

“Where the banker on whom a crossed cheque is drawn, in good faith and without negligence, pays it, if crossed generally, to a banker, and, if crossed specially, to the banker to whom it is crossed or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.”

(B) Land Survey Ordinance (Cap. 473)

Section 34 provides that -

“No-

- (a) member of the Committee;
- (b) member of a Disciplinary Board; or
- (c) employee of the Committee,

acting in good faith is personally liable for any act or omission without negligence of-

- (i) the Committee;
- (ii) the Disciplinary Board; or
- (iii) any such member or employee,

in the performance or purported performance of any function under this Ordinance.”

(C) Securities and Futures Ordinance (Cap. 571)

Section 39(2) and (5) provide that -

“(2) Where, in the discharge or purported discharge of its duties under section 63, a recognized exchange controller gives an instruction or direction or makes a request to a recognized clearing house of which it is a controller, the clearing house's duties under sections 38 and 47 or under its rules (including its default rules) are not applicable to the clearing house in respect of anything done or omitted to be done in good faith by the clearing house in compliance with the instruction, direction or request.

(5) Where a relevant office-holder takes action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognized clearing house, and believes on reasonable grounds that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage (as the case may be) is caused by the office-holder's own negligence.”