

立法會

Legislative Council

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Bills Committee on Competition Bill

Examples of statutory provisions on Director of Audit's examination

At the meeting of the Bills Committee on Competition Bill held on 13 April 2011, the Legal Service Division was requested to prepare an information note giving examples of statutory provisions on the Director of Audit's examination relating to statutory bodies.

2. Members may note that in many ordinances establishing statutory bodies, there are provisions which provide that the Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the relevant statutory body has expended its resources in performing its functions. As mentioned at the meeting held on 13 April 2011, it is common for such provisions to further provide that the Director of Audit may report to the President of the Legislative Council the results of the examination conducted by him. The formulation of these statutory provisions in various ordinances is similar. Some examples are set out at **Annex I** and **Annex II** respectively. Clause 27(1) and (3) of Schedule 5 to the Bill has similar formulation.

3. Where the Director of Audit conducts an examination, it is also common to empower the Director to have a right of access at all reasonable times to all such documents (in the custody or under the control of the statutory body) as he may reasonably require for conducting the examination 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. The formulation of this statutory provision in various ordinances is similar. Some examples are set out at **Annex III**. As mentioned at the meeting held on 13 April 2011, clause 27(2) of Schedule 5 to the Bill additionally provides for the power to make a copy of the whole or any part of all accounts, records and documents in the custody or under the control of the Competition Commission. Members may wish to know the Administration's reasons for the additional power.

4. Another common provision is to provide that the Director of Audit's power to conduct the examination mentioned in paragraph 2 above shall not operate to entitle the Director to question the merits of the policy objectives of the statutory body concerned. The formulation of this statutory provision in various ordinances is similar. Some examples are set out at **Annex IV**. Members may wish to note that there is no such provision in the Bill.

Encl.

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Examples of provisions on Director of Audit's examination

	Ordinance	Statutory body/Authority	Relevant provisions
1	Hospital Authority Ordinance (Cap. 113)	Hospital Authority	<u>Section 11(1)</u> The Director of Audit may, in respect of any financial year, conduct an examination into the economy and efficiency with which the Authority has expended its resources in performing its functions and exercising its powers.
2	Vocational Training Council Ordinance (Cap. 1130)	Vocational Training Council	<u>Section 19A(1)</u> Director of Audit may carry out such examination as he thinks fit into the economy, efficiency and effectiveness with which the Council has used its resources in discharging its functions and exercising its powers.
3	The Ombudsman Ordinance (Cap. 397)/ Personal Data (Privacy) Ordinance (Cap. 486)/ Sex Discrimination Ordinance (Cap. 480)	The Ombudsman/ Privacy Commissioner for Personal Data/ Equal Opportunities Commission	<u>Section 4(1) of Schedule 1A/Section 5(1) of Schedule 2/ Section 19(1) of Schedule 6</u> The Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the Ombudsman/Commissioner/Commission has expended his/its resources in performing his/its functions and exercising his/its powers.
4	Independent Police Complaints Council Ordinance (Cap. 604)	Independent Police Complaints Council	<u>Section 31(1) of Schedule 1</u> The Director of Audit may, in respect of any financial year of the Council, conduct an examination into the economy, efficiency and effectiveness with which the Council has expended its resources in performing its functions.

Annex II

Examples of provisions on reporting of the results of Director of Audit's examination

	Ordinance	Statutory body/Authority	Relevant provisions
1	Hospital Authority Ordinance (Cap. 113)/ The Ombudsman Ordinance (Cap. 397)/ Personal Data (Privacy) Ordinance (Cap. 486)/ Independent Police Complaints Council Ordinance (Cap. 604)	Hospital Authority/ The Ombudsman/ Privacy Commissioner for Personal Data/ Independent Police Complaints Council	<u>Section 11(4)/Section 4(4) of Schedule 1A/</u> <u>Section 5(4) of Schedule 2/Section 31(3) of Schedule 1</u> The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.
2	Vocational Training Council Ordinance (Cap. 1130)	Vocational Training Council	<u>Section 19A(3)</u> The Director of Audit may submit to the President of the Legislative Council the results of any examination carried out by him under subsection (1).

Examples of provisions on Director of Audit's right of access to documents

	Ordinance	Statutory body/Authority	Relevant provisions
1	Hospital Authority Ordinance (Cap. 113)/ The Ombudsman Ordinance (Cap. 397)/ Personal Data (Privacy) Ordinance (Cap. 486)/ Sex Discrimination Ordinance (Cap. 480)	Hospital Authority/ The Ombudsman/ Privacy Commissioner for Personal Data/ Equal Opportunities Commission	<p><u>Section 11(2)/Section 4(2) of Schedule 1A/</u> <u>Section 5(2) of Schedule 2/Section 19(2) of Schedule 6</u> 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.</p> <p><u>Section 11(3)/Section 4(3) of Schedule 1A/</u> <u>Section 5(3) of Schedule 2/Section 19(3) of Schedule 6</u> Subsection (2) applies only to documents in the custody and control of the Authority/Ombudsman/Commissioner/Commission.</p>
2	Vocational Training Council Ordinance (Cap. 1130)	Vocational Training Council	<p><u>Section 19A(2)</u> The Director of Audit shall-</p> <p>(a) have a right of access at all reasonable times to any documents in the custody or under the control of the Council which he may reasonably require; and</p> <p>(b) be entitled to require from any person holding or accountable for any document referred to in paragraph (a) such information and explanation as are reasonably necessary,</p> <p>for the purpose of carrying out an examination under subsection (1).</p>

	Ordinance	Statutory body/Authority	Relevant provisions
3	Independent Police Complaints Council Ordinance (Cap. 604)	Independent Police Complaints Council	<u>Section 31(2) of Schedule 1</u> The Director of Audit- (a) has a right of access at all reasonable times to all such records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other property in the custody or under the control of the Council as he may reasonably require for the purpose of conducting an examination under this section; and (b) is entitled to require from any person who holds or is accountable for any such document or materials such information and explanation as he considers reasonably necessary for that purpose.

Examples of provisions on restriction on Director of Audit to question policy objectives

	Ordinance	Statutory body/Authority	Relevant provisions
1	Vocational Training Council Ordinance (Cap. 1130)	Vocational Training Council	<u>Section 19A(4)</u> Subsection (1) shall not be construed as entitling the Director of Audit to question the merits of the policy objectives of the Council.
2	The Ombudsman Ordinance (Cap. 397)/ Personal Data (Privacy) Ordinance (Cap. 486)/ Sex Discrimination Ordinance (Cap. 480)	The Ombudsman/ Privacy Commissioner for Personal Data/ Equal Opportunities Commission	<u>Section 4(5) of Schedule 1A/Section 5(5) of Schedule 2/</u> <u>Section 19(5) of Schedule 6</u> Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Ombudsman/Commissioner/Commission.
3	Independent Police Complaints Council Ordinance (Cap. 604)	Independent Police Complaints Council	<u>Section 31(4) of Schedule 1</u> Subsection (1) does not entitle the Director of Audit to question the merits of the policy objectives of the Council.