

LEGISLATIVE COUNCIL BRIEF

The Ombudsman Ordinance
(Chapter 397)

THE OMBUDSMAN ORDINANCE (AMENDMENT OF SCHEDULE 1) ORDER 2009

INTRODUCTION

At the meeting of the Executive Council on 27 October 2009, the Council ADVISED and the Chief Executive ORDERED that The Ombudsman Ordinance (Amendment of Schedule 1) Order 2009, at **Annex A**, should be made under section 24 of The Ombudsman Ordinance, to bring the following public bodies under the jurisdiction of The Ombudsman –

- (a) Auxiliary Medical Service (AMS);
- (b) Civil Aid Service (CAS);
- (c) Consumer Council (CC); and
- (d) Estate Agents Authority (EAA).

BACKGROUND

2. Section 7 of The Ombudsman Ordinance (TOO) empowers The Ombudsman to investigate any action taken by or on behalf of an organisation specified in Part 1 of Schedule 1 in the exercise of its administrative functions. At present, The Ombudsman has jurisdiction over nearly all government departments and agencies, except those organisations set out in Part II of Schedule 1 (including the Hong Kong Police Force and the Independent Commission Against Corruption) over which The Ombudsman only has jurisdiction on matters relating to the exercise of their administrative functions in relation to the Code on Access to Information. A list of these government departments and agencies is at **Annex B**.

B

3. The Ombudsman has conducted a review of his jurisdiction and

submitted Parts I and II of his report to the Administration in November 2006 and November 2007 respectively. Having consulted the relevant bureaux or departments and public bodies, we briefed the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services of the Administration's responses in December 2007, February 2008 and April 2009 respectively including our proposals to extend the purview of The Ombudsman to cover AMS, CAS, CC and EAA.

THE ORDER

4. To provide for the four public bodies mentioned in paragraph 1 above to come under The Ombudsman's jurisdiction, the Order at Annex A makes the necessary amendments to include these bodies in Part I of Schedule 1 to The Ombudsman Ordinance.

5. The opportunity is also taken to make clear that the AMS and the CAS, to which TOO currently applies, are Government departments.

LEGISLATIVE TIMETABLE

6. The legislative timetable is as follows –

Publication in the Gazette	6 November 2009
Tabling at the LegCo	11 November 2009

IMPLICATIONS OF THE PROPOSAL

7. The Ombudsman meets its staffing and other operating expenses with annual appropriations from the Administration (its budget in 2009-10 is some \$90 million). The Ombudsman has not asked for additional funding in connection with its proposal of extending its jurisdiction to the public bodies concerned.

8. On the other hand, all public bodies are expected to have stringent monitoring mechanism and proper governance structure no matter whether they are subject to The Ombudsman's jurisdiction or not. Hence, the compliance cost for the four public bodies upon inclusion should not be significant. The financial and staffing implications arising from the recommendation in this paper, if any, should be absorbed from within the respective bureaux' resources.

9. The recommendation is in conformity with the Basic Law, including the provisions concerning human rights. The Order does not affect the existing binding effect of the Ordinance on the Government – those Government bodies listed in Schedule 1 to the Ordinance will continue to be bound. There are no economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

10. We have consulted the public bodies concerned and have obtained their agreement in respect of the recommendation. We have informed The Ombudsman of the Administration's position. The Ombudsman has advised that it would leave the issues to the Administration and LegCo. We have also briefed LegCo Panel on Administration of Justice and Legal Services which noted the Administration's position.

PUBLICITY

11. We will issue a press release today. A spokesman will be available for answering media enquiries.

ENQUIRIES

12. Any enquiries on this brief should be directed to Miss Winnie Wong, Assistant Director of Administration (1) at 2810 3503.

Administration Wing
Chief Secretary for Administration's Office

6 November 2009

**THE OMBUDSMAN ORDINANCE (AMENDMENT
OF SCHEDULE 1) ORDER 2009**

(Made by the Chief Executive in Council under section 24 of The
Ombudsman Ordinance (Cap. 397))

1. Commencement

This Order comes into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

**2. Organizations to which this Ordinance
applies**

(1) Part I of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by repealing “Auxiliary Medical Service (department)” and substituting “Auxiliary Medical Service (Government department)”.

(2) Part I of Schedule 1 is amended by repealing “Civil Aid Service (department)” and substituting “Civil Aid Service (Government department)”.

(3) Part I of Schedule 1 is amended –

- (a) by adding “Auxiliary Medical Service (as raised and maintained under section 3 of the Auxiliary Medical Service Ordinance (Cap. 517)).”;
- (b) by adding “Civil Aid Service (as raised and maintained under section 3 of the Civil Aid Service Ordinance (Cap. 518)).”;
- (c) by adding “Consumer Council.”;
- (d) by adding “Estate Agents Authority.”.

Manda CHAN

Clerk to the Executive Council

COUNCIL CHAMBER

27 October 2009

Explanatory Note

The purpose of this Order is to include in the list of organizations to which The Ombudsman Ordinance (Cap. 397) applies the following organizations –

- (a) Auxiliary Medical Service (as raised and maintained under section 3 of the Auxiliary Medical Service Ordinance (Cap. 517));
- (b) Civil Aid Service (as raised and maintained under section 3 of the Civil Aid Service Ordinance (Cap. 518));
- (c) Consumer Council; and
- (d) Estate Agents Authority.

2. This Order also makes clear that the Auxiliary Medical Service and the Civil Aid Service, to which The Ombudsman Ordinance (Cap. 397) currently applies, are Government departments. These Government departments were established before the enactment of the Auxiliary Medical Service Ordinance (Cap. 517) and the Civil Aid Service Ordinance (Cap. 518).

**Organisations Listed in Schedule 1
to The Ombudsman Ordinance, Cap. 397**

Part I

- Organisations subject to The Ombudsman's jurisdiction in respect of exercise of their administrative functions:
 1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Secretariat of the Independent Police Complaints Council, and the Secretariat of the Public Service Commission;
 2. Airport Authority;
 3. Employees Retraining Board;
 4. Equal Opportunities Commission;
 5. Financial Reporting Council;
 6. Hong Kong Arts Development Council;
 7. Hong Kong Housing Authority;
 8. Hong Kong Housing Society;
 9. Hong Kong Monetary Authority;
 10. Hong Kong Sports Institute Limited;
 11. Hospital Authority;
 12. Kowloon-Canton Railway Corporation;
 13. Legislative Council Secretariat;
 14. Mandatory Provident Fund Schemes Authority;
 15. Privacy Commissioner for Personal Data;

16. Securities and Futures Commission;
17. The Hong Kong Examinations and Assessment Authority;
18. Urban Renewal Authority;
19. Vocational Training Council; and
20. West Kowloon Cultural District Authority.

Part II

- Organisations subject to The Ombudsman's jurisdiction in respect of exercise of their administrative functions in relation to the Code on Access to Information:
 1. Independent Commission Against Corruption;
 2. Hong Kong Auxiliary Police Force;
 3. Hong Kong Police Force; and
 4. Secretariat of the Public Service Commission.