

Review of the Binding Effect of 17 Ordinances

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**Review of the Binding Effect of the
Mandatory Provident Fund Schemes Ordinance, Cap, 485**

I. Name of the Ordinance

Mandatory Provident Fund Schemes Ordinance, Cap. 485 (as amended by s. 2 of the Provident Fund Schemes Legislation (Amendment) Ordinance 1998)

II. Purpose of the Ordinance

To provide for the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement, to provide for a regulatory regime in respect of such schemes, to create a mandatory Provident Fund Schemes Authority to oversee the administration and management of registered schemes, and to establish a number of committees to give advice to the Authority and other incidental matters.

III. Current binding effect

The Ordinance binds the HKSARG by virtue of s.3 which reads:-

“This Ordinance binds the Government”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

s.6H : observance of guidelines issued by the Authority and provision of information and documents to the Authority.

ss.7 - 7B : employers’ obligation to arrange for employees to become members of registered schemes and to make contributions to the schemes.

s.14(4) : compliance with requirements with respect to the transfer of accrued benefits from one scheme to another or from one account to another.

s.19 : the Authority has power to enter employers’ premises, demand production of records and conduct inquiry.

s.23(2)(a) and (c) provision of information to the Authority in case an employer fails to secure membership of a registered scheme for its employees for the purpose of joining the “Residual Provident Fund Scheme”.

ss.30A,
32(3) -
32(3C) : Authorised persons and inspectors have power to enter and search premises, demand production of documents, inspect records, etc for the purpose of inspection or investigation in respect of a registered scheme. (Since these powers are conferred to facilitate investigation of the affairs of a registered scheme, they would normally be exercised against the trustees of the scheme rather than the participating employers).

s.34(5): requirements may be imposed by the Authority on the participating employer as a condition of giving consent to the voluntary winding up of an employer sponsored scheme.

s.36(3)(b)
and (d): power of the Appeal Board to summon any person to appear or to produce documents.

s.41(1) and
(2): obligation of secrecy in respect of information obtained in the exercise of functions conferred under the Ordinance.

Sanctions

s.18(1)-(3): liability to the Authority for a surcharge for late payment of mandatory contributions.

s.32(4)-32(7): obligation in relation to investigation, offences and penalties for obstructing investigation.

s.40: offences relating to appeal.

s.41(3) and
s.42(5)(b): offence for unlawful disclosure of information.

s.43: offence for an unapproved person to administer a provident fund scheme.

s.43B: offence for employers' contravention of ss. 7, 7A and 14(4).

s.43D: offence for obstructing the Authority's exercise of functions.

s.43E: offence to make false or misleading statement to the Authority, an approved trustee or an auditor.

ss.45, 45B,
45C and 45F: imposition of prescribed financial penalty and taking civil proceedings for failure to comply with notice issued by the Authority, contravention of the Ordinance or recovery of damages.

Review of the Binding Effect of the
Ozone Layer Protection Ordinance (Cap. 403)

I. Name of the Ordinance

The Ozone Layer Protection Ordinance.

II. Purpose of the Ordinance

The Ordinance gives effect to Hong Kong's international obligations under the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. It provides for the prohibition of the manufacture of, controls the importation and exportation of, and conserves the resources of, substances that deplete the ozone layer and of products containing or made with those substances, and provided for related matters.

The Ordinance includes the following subsidiary legislation*:

- the Ozone Layer Protection (Fees) Regulations;
- the Ozone Layer Protection (Controlled Refrigerants) *Regulation*; and
- the Ozone Layer Protection (Products Containing Scheduled Substances) (Import Banning) Regulation.

[*No adaptation is required in respect of the subsidiary legislation. The term "Government" does not appear in any of them.]

III. Current binding effect

S. 18 of the Ordinance provides that, subject to this section, the Ordinance binds the Government (HKSARG). The major exceptions provided under ss. 18(2) and 18(4) exempt the HKSARG from proceedings, criminal liabilities and payment of fees -

- sections 3, 4, 5(8), 6(6), 7(5) and 13 and any regulations made under section 16 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Government (s. 18(2)); and
- no fee or charge prescribed for the purposes of *the* Ordinance shall be payable by the Government (s. 18(4)).

IV. **Relevant sections of the Ordinance that impose obligations or liabilities**

- Ss.5-7 : requirements for registration and licensing for import and export of scheduled substances, and right to appeal. (However, pursuant to s. 18(2), ss. 5(8), 6(6) and 7(5) shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, relevant “State” organs. Under s. 18(4), no fee or charge prescribed for the purposes of the Ordinance shall be payable by relevant “State” organs);
- S.11 : powers to enter, search and seize;
- S.12 : ancillary powers to investigate;
- S.14-14A : forfeiture; and
- S.18 : application for registration or the issue of a licence to be made by any “public officer” on behalf of the relevant “State” organ.

Sanctions

By virtue of s. 18(2), no sanctions will apply to the Government or other parts of the “State”.

Review of the Binding Effect of the

Dumping at Sea Ordinance (Cap. 466)

I. Name of the Ordinance

The Dumping at Sea Ordinance.

II. Purpose of the Ordinance

The Ordinance controls the disposal of substances and articles at sea and the dumping of substances and articles in the sea and under the sea-bed.

III. Current binding effect

S. 3 of the Ordinance provides that the Ordinance binds the Government (HKSARG). Further, it also provides for a mechanism whereby the Director of Environmental Protection is obliged to report to the Chief Secretary on the continuous non-compliance of the provisions of the Ordinance by a public officer in carrying out his duties in the service of the HKSARG.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

Ss.7 - 11 : obligations to obtain a permit for dumping / incineration at sea, and exemptions;

Ss.12 - 14 : marine pollution abatement notice;

Ss.15 - 22 : powers to enter land or vehicles, to board vessel, to require a person to give information, to require an aircraft, vessel or marine structure to stop or move, to require attendance, to detain and use reasonable force; and matters connected therewith;

Ss.23 : power to take remedial action;

Ss.24 : power to test, etc.

Sanctions

Ss.25 - 26 : offences -

- commission of prohibited acts without permit or contravention of directions of a permit;
- supply of false information or failure to disclose a material particular to procure the issue of a permit, or when complying with the conditions under a permit;
- failure to comply with a marine pollution abatement notice;
- intentional obstruction or failure to comply with prescribed conditions, etc.;
- liability of persons where commission of an offence is made by a body corporate or a firm; and
- related offences.

**Review of the Binding Effect of
the Environmental Impact Assessment Ordinance, Cap. 499**

I. Name of the Ordinance

Environmental Impact Assessment Ordinance, Cap. 499.

II. Purpose of the Ordinance

To provide for assessing the impact on the environment of certain projects and proposals for protecting the environment.

The Ordinance includes the following subsidiary legislation*:

- Environmental Impact Assessment (Appeal Board) Regulation; and
- Environmental Impact Assessment (Fees) Regulation (“Fees Regulation”)

[*No adaptation is required in respect of the subsidiary legislation. Consideration has to be given as to whether the other parts of “State” should also be exempted from payment of fees under section 3 of the Fees Regulation.]

III. Current binding effect

The whole Ordinance binds the HKSARG.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

Sections 5-14: application for an environmental permit and payment of prescribed fees;

Sanctions

Section 24: cessation order against a designated project;

Section 25: recovery of costs of works to remedy environmental damage;

Section 26: offence of carrying out a designated project without an environmental permit.

**Review of the Binding Effect of the
Marine Parks Ordinance (Cap. 476)**

I. Name of the Ordinance

The Marine Parks Ordinance.

II. Purpose of the Ordinance

The Ordinance provides for the designation, control and management of marine parks and marine reserves, and for purposes connected therewith.

The Ordinance includes the following subsidiary legislation:

- the Marine Parks and Marine Reserves Regulation;
- the Marine Parks (Designation) Order; and
- the Marine Reserve (Designation) Order.

[No adaptation is required in respect of the subsidiary legislation.]

III. Current binding effect

S. 28 of the Ordinance provides that, subject to certain exceptions, the Ordinance binds the Government (HKSARG). S. 21 requires that any person (including the HKSARG) carries out any new development within any marine park or marine reserve must obtain a prior approval of the Country and Marine Parks Authority. A person (including the HKSARG) must possess a licence or permit which is issued under s. 22 before he can do any acts which are controlled under the Ordinance. S. 28(5) provides that, in respect of any new development or other controlled acts to be carried out or committed by the HKSARG, the relevant application for the approval, licence or permit (as the case may be) may be made by any public officer on behalf of the HKSARG. The major exceptions to the binding effect, as provided under s. 28, which exempt the HKSARG from certain proceedings and criminal liabilities include -

- sections 9, 16, 20 and 21 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Government;
- the Country and Marine Parks Authority shall report to the Chief Secretary on any continuous contravention of the

above provisions by any person in the course of carrying of his duties in the service of the Government. The Chief Secretary shall inquire into the matter and ensure that the best practicable steps are taken to terminate such contravention; and

- no fee or charge prescribed for the purposes of the Ordinance shall be payable by the Government.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

S.9 - 16, 21: requirement that prior approval of the Country and Marine Parks Authority is necessary for the carrying out of any new development within a designated marine park or marine reserve; and obligation to comply with any order by the Authority to carry out, at one's expense, any remedial or restoration work within a designated marine park or marine reserve.

#Pursuant to ss. 28 (2), ss. 9, 16, 20 and 21 shall not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the relevant "State" organs. Under s. 28(7), no fee or charge prescribed for the purposes of the Ordinance shall be payable by the relevant "State" organs;

S.22 : licence and permits to do things which are otherwise prohibited under *the Ordinance*; and
S.25 : powers to inspect, search, seize and arrest.

Sanctions

S.20 : offences for breach of the subordinate regulations (but see discussion in paragraph IV# above); and
S.27 : assaulting, resisting or obstructing authorised officer.

**Review of the Binding Effect of
the Patents Ordinance (Cap. 514)**
(Originally Ord. No.52 of 1997)

I. Name of Ordinance

Patents Ordinance.

II. Purpose of the Ordinance

To make new provision in respect of patents and related matters in substitution for the Registration of Patents Ordinance (previously Cap.42). An invention is patentable if it is susceptible of industrial application, is new and involves an inventive step.

III. Current Binding Effect

Section 151 of the Ordinance provides that subject to provisions of the Ordinance, and notwithstanding section 5(3) of the Crown Proceedings Ordinance (Cap. 300), the Ordinance binds the HKSARG.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- Sections 73-75 which deal with rights conferred on proprietors of patents;

Sanctions

- sections 80-90 which provide for civil infringement proceedings; and,
- Part XVII (sections 141-145) which deals with criminal offences under the Ordinance:
 - (i) Section 141 - Falsification of the register of patents;
 - (ii) Section 142 - Unauthorized claim of patent rights;
 - (iii) Section 143 - Unauthorized claim that patent has been applied for;
 - (iv) Section 144 - Misuse of the title “Patents Registry”;
 - (v) Section 145 - further provides for criminal liabilities in cases where an offence is committed by a body corporate or a partnership.

**Review of the Binding Effect of the
Registered Designs Ordinances (Cap. 522)**

I. Name of the Ordinance

Registered Designs Ordinance

II. Purpose of the Ordinance

To provide for registration and protection of designs. Design is defined in section 2 of the Ordinance as follows:

“design” means features of shape, configuration, pattern or ornament applied to an article by any industrial process, being features which in the finished article appeal to and are judged by the eye, but does not include -

- (a) a method or principle of construction; or
- (b) features of shape or configuration of an article which -
 - (i) are dictated solely by the function which the article has to perform; or
 - (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part;”

A set of Registered Designs Rules (Cap. 522 sub. leg) has been enacted under the Ordinance. Apart from sections 3-5, which deal with registrability of designs, the Rules deal with procedural matters only.

III. Current Binding Effect

Section 4 of the Ordinance provides that, subject to Part IV (which deals with Government use of registered designs), the Ordinance binds the HKSARG (see section 4).

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- Part III (sections 31-35) which deals with rights relating to registered designs

Sanctions

- sections 48 - 57 which provide for civil infringement proceedings; and,
- Part VIII (sections 85 -89) which deals with criminal offences under the Ordinance:
 - (i) Section 85 - Falsification of the Register of registered designs;
 - (ii) Section 86 - False representation that a design is registered;
 - (iii) Section 87 - Misuse of the title “Designs Registry”;
 - (iv) Section 88 - Contravention of directions given by the Registrar as to prohibition or restriction of publication or communication of information where a design is notified by the Secretary of State (now presumably should be interpreted as referring to the CPG or other competent authorities of the PRC) as relevant for defence purposes.
 - (v) Section 89 further provides for criminal liabilities in cases where an offence is committed by a body corporate or a partnership.

**Review of the Binding Effect of
the Occupational Safety and Health Ordinance, Cap. 509**

I. Name of the Ordinance

Occupational Safety and Health Ordinance, Cap. 509

II. Purpose of the Ordinance

The purposes are to ensure the safety and health of employees when they are at work; to prescribe measures that will contribute to making the workplaces of employees safer and healthier for them; to improve the safety and health standards applicable to certain hazardous processes, plant and substances used or kept in workplaces; and generally to improve the safety and health aspects of working environments of employees.

III. Current binding effect

The whole Ordinance binds the HKSARG. (Section 5(1))

IV. Relevant sections of the Ordinance that impose obligations or liabilities

Section 6: responsibility of an employer to ensure safety and health of employees; offence for failing to do so;

Section 7: responsibility of an occupier of premises to ensure that the premises are safe and without risks to health; offence for failing to do so;

Section 8: responsibility of an employee to take care for the safety and health of himself and others, and to cooperate with his employers; offence for failing to do so;

Sections 9-10: obligations to comply with an improvement notice or a suspension notice; offences for failing to do so;

Sections 13-14: obligations to report accidents or other matters to an occupational safety officer; offences for failing to do so;

Section 24: obligations to provide certain information to an occupational safety officers; offence for failing to do so;

Section 25: obligation to exhibit notice in workplace; offence for failing to do so.

**Review of the Binding Effect of
Plant Varieties Protection Ordinance (Cap. 490)**

I. Name of the Ordinance

Plant Varieties Protection Ordinance (Cap. 490).

II. Purpose of the Ordinance

To provide for the protection of proprietary rights to plant varieties except inedible algae and inedible fungi.

The Ordinance includes one piece of subsidiary legislation - Plant Varieties Protection Regulation which deals with procedural matters.

III. Current binding effect

The whole Ordinance binds the Government by virtue of section 3 which reads:-

“This Ordinance binds the Government”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- s.25: no infringement of grantees’ rights in respect of a plant variety protected under the Ordinance;
- s.28:grantees’ obligation to provide notice of protection to purchasers;
- s.30:obligation of a person who sells reproductive material of a plant variety to use its denomination.

Exceptions

- s.26:exceptions to grantees’ rights in respect of a protected plant variety.

Sanctions

- s.25:civil liability of infringement of grantees’ rights in respect of a plant variety protected under the Ordinance;
- ss.38 - 40:offences of falsification of applications; misrepresentations; misuse of denomination on sale of reproductive material of a protected variety.

**Review of the Binding Effect of
Gas Safety Ordinance (Cap. 51)**

I. Name of the Ordinance

Gas Safety Ordinance (Cap. 51) and its subsidiary legislation.

II. Purpose of the Ordinance

To control, in the interests of safety, the importation, manufacture, storage, transport, supply and use of gas, and to provide for matters incidental thereto or connected therewith.

III. Current binding effect

The whole Ordinance binds the Government except that the Government shall not be liable to pay any fee prescribed therein by virtue of section 3 which reads:-:

“(1) Subject to subsection (2), this Ordinance shall bind the Government.

(2) No fee prescribed under this Ordinance shall be payable by the Government.”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

A. Gas Safety Ordinance (Cap.51)

- s.13: compliance with improvement notices served by the Gas Authority in relation to the requirements under the Ordinance;
- s.13AA(3): restriction in the use of gas installations which have been decommissioned by the Authority;
- s.14: furnishing information by registered persons, owners of gas installations or gas vehicles to the Authority when required by the Authority to do so;
- s.21: compliance with notice (requiring attendance, etc.) served by the appeal board;
- s.23(2)(b): answering questions asked by chairman of appeal board.

Sanctions

- s.12: authorized officers' powers of entry, search, seizure and removal, etc.;
- s.13A: powers of Authority to take improvement measures, enter premises or remove persons where failure to comply with improvement notices;
- s.13AA(2) & (4): power of the Authority to effect repairs, etc.; costs recoverable from persons failing to do so as a civil debt;
- s.27: offences for failure to comply with directions or notices; contravention of s.13AA(3) or s.23(2)(b); obstructing the Authority or an inspector in the exercise of his functions; failure to comply with requirements; and making false statements;
- s.30: vicarious liability of registered person except without knowledge or with due diligence;
- s.32: forfeiture of articles seized.

B. Gas Safety (Gas Quality) Regulations (Cap. 51 sub. leg. A)

- reg. 3: compliance with standard of pressure in the supply of gas;
- reg. 4: compliance with standard of purity in the supply of gas;
- reg. 5(1): no supply of gas without distinctive smell.

Sanctions

- reg. 6: offences for contravention of reg. 3, 4 and 5(1) above.

Exceptions

- reg. 5(2): distinctive smell requirement under reg. 5(1) shall not apply to cigarettes lighters or aerosol cans;
- reg. 7: general defence of "circumstances beyond control" and "all reasonable steps taken";
- reg. 8: Power of Authority to give exemptions.

C. Gas Safety (Gas Supply) Regulations (Cap. 51 sub. leg. B)

- reg. 3: no construction or use of notifiable gas installations without approval;
- reg. 6B: duty of owners to maintain gas installations in a safe condition;
- reg. 6C: compliance with notice to inspect installations;
- regs. 7 - 12, 47 & 48: requirements for containers and use of containers, etc.;
- regs. 13 & 14: requirements for vaporisers;
- regs. 15 - 23: requirements for gas pipes and pressure-regulating installations;
- reg. 23A: no carrying out of works in the vicinity of gas pipes unless reasonable measures taken to protect gas pipes;
- regs. 24 - 43: requirements for gas vehicles.

Sanctions

- reg. 46: removal of liquefied petroleum gas or vessels carrying such gas; removal costs recoverable from owners;
- reg. 49: offences of contravention of the requirements in relation to construction, use and inspection of notifiable gas installations; gas containers and use of gas containers; vaporisers; gas pipes and pressure-regulating installations; gas vehicles; and carrying out works without taking reasonable measures to protect gas pipes.

Exceptions

- reg. 49A: defences to Reg. 23A - having taken “all reasonable steps”;
- reg. 50: power of Authority to give exemptions.

D. Gas Safety (Installation and Use) Regulations (Cap. 51 sub. leg. C)

- regs. 4 - 9: requirements in relation to gas fittings in premises;
- regs. 10 - 15: requirements in relation to gas meters in premises;
- regs. 16 - 22: requirements in relation to installations pipes;
- regs. 23 - 33: requirements in relation to gas appliances;
- reg. 34: obligation to give notice in case of escape of gas;
- regs. 35 & 36: no installation of certain kinds of gas heater.

Sanctions

- reg. 37: offences for contravention of regs. 4 - 36 above.

Exceptions

- reg. 38: defence of “reasonable steps taken” in relation to certain offences;
- reg. 39: power of Authority to give exemptions.

E. Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap.51 sub. leg. D)

- reg. 3: nobody shall carry out gas installation work unless registered as gas installers (who is a registered gas contractor or an employee thereof);
- reg. 12:nobody shall carry out business of gas contractor unless registered as such; no employment of person other than a registered gas contractor to carry out gas installation work;
- reg. 31: prohibition from advertising as a gas installer or contractor unless so registered.

Sanctions

- reg. 35: offences for contravention of regs. 3, 12 and 31 above.

Exceptions

- reg. 34: power of Authority to give exemptions.

F. Gas Safety (Registration of Gas Supply Companies) Regulations (Cap.51 sub. leg. E)

- reg. 3: nobody shall carry out gas supply business unless registered;
- reg. 11: no storage or transportation of gas unless by employees of a registered gas supply company or with approval except for gas in disposable cylinders;
- reg. 17(2): no restoration of gas supply to an interrupted gas supply system unless in safe situation;
- reg. 26: prohibition from advertising as a gas supply company unless so registered.

Sanctions

- reg. 29: offences for contravention of regs. 3, 11, 17 and 26 above.

Exceptions

- reg. 30: power of Authority to give exemptions.

G. Gas Safety (Miscellaneous) Regulations (Cap. 51 sub. leg. F)

- reg. 3(1) & (2): restriction on importation, manufacture, sale and supply of flexible gas tubing;
- reg. 4(1): requirements to be complied with by gas supply company when gas composition altered.

Sanctions

- reg. 3(3): offence for contravention of reg. 3(1) or (2);
- reg. 4(2): offence for contravention of reg. 4(1).

Exceptions

- reg. 6: power of Authority to give exemptions.

H. Gas Safety (Gasholders Examination) Regulation (Cap. 51 sub. leg. G)

- regs. 2 - 7: requirement of owners of gas holders to examine gas holders.

Sanctions

- reg. 8: offences for contravention of provisions in relation to examination of gas holders.

**Review of the Binding Effect of the
Personal Data (Privacy) Ordinance (Cap. 486)**

I. Name of the Ordinance

Personal Data (Privacy) Ordinance, Cap. 486.

II. Purpose of the Ordinance

To protect the privacy of individuals in relation to personal data.

III. Current binding effect

S.3 provides that the whole Ordinance binds the HKSARG.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

s.4 : compliance with data protection principles in Sch. 1;

ss.14 - 16 : submission of information specified in Sch.3 to the Commissioner if so required by the Commissioner and such information is open for public inspection;

ss.18 - 26 : obligation to deal with public requests for access to and correction of personal data, erase personal data no longer required and keep register of refusals to comply with data access and correction requests;

ss.30 - 32 : special procedure for the carrying out of matching procedures;

s.33 : prohibition of transfer of personal data to place outside Hong Kong;

s.36 : inspection of personal data systems by Commissioner;

ss37 -38, : complaints about contravention of the Ordinance and
41 - 44 investigations by Commissioner (Power of entry into premises is provided under s.42).

Enforcement and sanction sections

- s.50 : Commissioner may serve enforcement notices to compel data users to remedy the contravention.
- s.64(1)-(4), (9) : liable to a fine at level 3 and 6 months' imprisonment for provision of false or misleading information to the Commissioner or to data requesters;
- s.64(5) : liable to a fine at level 3 for failure to comply with conditions specified in the Commissioner's consent for the carrying out of a matching procedure;
- s.64(7) : liable to a fine at level 5 and 2 years' imprisonment and a daily penalty of \$1,000 for failure to comply with an enforcement notice;
- s.64(10) : liable to a fine at level 3 for contravention of other provisions of the Ordinance (other than the data protection principles);
- s.65 : employers and principals are vicariously liable for acts done by their employees and agents;
- s.66 : compensation to data subject who suffers as a result of a contravention of the Ordinance.

V. Exemptions

- ss.52 - 56 : exemptions for personal data held for domestic purposes, employment, relevant process and personal references;
- s.57 : exemption for personal data held by or on behalf of the Government for the purposes of safeguarding security, defence or international relations in respect of Hong Kong;
- s.58 - 60 : exemptions in respect of personal data held for the purpose of prevention and detection of crimes or unlawful conducts; personal data relating to the physical or mental health of the data subject; and personal data subject to legal professional privilege;

- s.61 : news organisations may refuse access to personal data held solely for the purpose of news activities or any directly related activities until the data have been published or broadcast;
- s.62 : exemptions in respect of personal data to be used for preparing statistics or carrying out research without identifying data subjects..

**Review of the Binding Effect of
Sex Discrimination Ordinance (Cap. 480)**

I. Name of the Ordinance

Sex Discrimination Ordinance (Cap. 480)

II. Purpose of the Ordinance

To render unlawful certain kinds of discrimination against persons on the grounds of sex, marital status or pregnancy, and sexual harassment; and to establish the Equal Opportunities Commission working towards the elimination of such discrimination and harassment.

The Ordinance includes the following subsidiary legislation:

- Sex Discrimination (Formal Investigations) Rules;
- Sex Discrimination (Investigation and Conciliation) Rules; and
- Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation.

III. Current binding effect

The whole Ordinance binds the Government by virtue of section 3 which reads:-

“This Ordinance binds the Government.”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- ss 11 - 14: no discrimination by employers;
- s 17: no discrimination by qualifying bodies (which confer an authorisation or qualification which is needed for, or facilities, engagement in a particular profession or trade);
- s 21:(without prejudice to the operation of the other provisions of Part III of Cap 480) no discrimination by the Government in the performance of its functions or the exercise of its powers;
- ss 23 - 24:no sexual harassment;

- ss 28:no discrimination in the provision of facilities and services to the public;
- ss 29 - 30:no discrimination in disposal or management of premises;
- s 35:no discrimination in eligibility to vote for and to be elected or appointed to advisory bodies etc;
- s 38:(without prejudice to the operation of the other provisions of Part IV of Cap 480) no discrimination by the Government in the performance of its functions or the exercise of its powers:
- s 40:no sexual harassment in the provision of facilities or services etc;
- ss 42 - 45:no discriminatory practices; no discriminatory advertisements; no instructions or pressure to discriminate;

General Exceptions

- s 48:Special measures to ensure equal opportunities;
- s 52:communal accommodation for men or women only;
- ss 53 - 54:discriminatory training to persons of one sex in special need of training;
- s 57:acts done for purposes of protection of women;
- s 58:acts done under statutory authority to be exempted from certain provisions of Parts IV and V;
- s 59:acts safeguarding security of Hong Kong;
- s 62:specific exemptions under Schedule 5 (eg provisions of benefits or allowances to persons of different marital status);

Sanctions

- s 46:employers and principals liable for discriminatory acts of employees or agents;
- s 47:persons liable if aiding unlawful acts under Cap 480;

- Part VII (ss 63 - 74): Equal Opportunities Commission - establishment, functions and powers, codes of practice and investigations;
- Part VIII (ss 75 - 86): Enforcement - general, enforcement notices, other enforcement by Commission, help for persons suffering discrimination or sexual harassment etc. In particular,
 - s 76 (Civil proceedings in the District Court);
 - s 81 (injunction against persistent discrimination or sexual harassment);
 - s 82 (enforcement proceedings to be brought by the Commission in the District Court for contravention of ss 43 - 45);
 - s 87: validity and revision of contracts - terms void;
 - s 72(5): offence of concealing or providing false information to the Commission for the purpose of its investigation;
 - ss 5(2) & 7(5) of the Sex Discrimination (Investigation and Conciliation) Rules: offence of failing to comply with directions of the Commission.

**Review of the Binding Effect of
Family Status Discrimination Ordinance (Cap. 527)**

I. Name of the Ordinance

Family Status Discrimination Ordinance (Cap. 527).

II. Purpose of the Ordinance

To render unlawful discrimination against persons on the ground of family status (ie the status of having responsibility for the care of an immediate family member) and to extend the jurisdiction of the Equal Opportunities Commission to include such discrimination and for connected purposes.

The Ordinance includes the following subsidiary legislation:

- Family Status Discrimination (Formal Investigations) Rules;
- Family Status Discrimination (Investigation and Conciliation) Rules; and
- Family Status Discrimination (Proceedings by Equal Opportunities Commission) Regulation.

III. Current binding effect

The Ordinance binds the Government by virtue of section 3 which reads:-
“This Ordinance binds the Government.”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- ss 8 - 10: no discrimination by employers;
- s 13: no discrimination by qualifying bodies (which confer an authorisation or qualification which is needed for, or facilities, engagement in a particular profession or trade);
- s 17: (without prejudice to the operation of the other provisions of Part III of Cap 527) no discrimination by the Government in the performance of its functions or the exercise of its powers;
- s 19: no discrimination in the provision of facilities and services to the public;
- ss 20 - 21: no discrimination in disposal or management of premises;

- s 25: no discrimination in eligibility to vote for and to be elected or appointed to advisory bodies etc;
- s 28: (without prejudice to the operation of the other provisions of Part IV of Cap 527) no discrimination by the Government in the performance of its functions or the exercise of its powers;
- ss 30 - 33: no discriminatory practices; no discriminatory advertisements; no instructions or pressure to discriminate;

General Exceptions

- s 36: Special measures to ensure equal opportunities;
- s 39: discriminatory training to persons in special need of training;
- s 41: acts done under statutory authority to be exempted from certain provisions of Parts III and IV;
- s 43: specific exemptions under Schedule 2 (eg provisions of benefits or allowances to persons of different marital status);

Sanctions

- s 34: employers and principals liable for discriminatory acts of employees or agents;
- s 35: persons liable if aiding unlawful acts under Cap 527;
- Part VII (ss 42 - 52): Equal Opportunities Commission - functions and powers, codes of practice and investigations;
- Part VIII (ss 53 - 64): Enforcement - general, enforcement notices, other enforcement by Commission, help for persons suffering discrimination etc. In particular,
 - s 54 (Civil proceedings in the District Court);
 - s 59 (injunction against persistent discrimination);
 - s 60 (enforcement proceedings to be brought by the Commission in the District Court for contravention of ss 31 - 33);
- s 50(5): offence of concealing or providing false information to the Commission for the purpose of its investigation;
- ss 5(2) & 7(5) of the Family Status Discrimination (Investigation and Conciliation) Rules: offence of failing to comply with directions of the Commission.

**Review of the Binding Effect of
Disability Discrimination Ordinance (Cap. 487)**

I. Name of the Ordinance

Disability Discrimination Ordinance (Cap. 487).

II. Purpose of the Ordinance

To render unlawful discrimination against persons on the ground of their or their associates' (i.e. spouse, relative, etc.) disability and to extend the jurisdiction of the Equal Opportunities Commission to include such discrimination and for connected purposes.

The Ordinance includes the following subsidiary legislation:

- Disability Discrimination (Formal Investigations) Rules;
- Disability Discrimination (Investigation and Conciliation) Rules; and
- Disability Discrimination (Proceedings by Equal Opportunities commission) Regulation.

III. Current binding effect

The Ordinance binds the Government by virtue of section 5 which reads:-

“This Ordinance binds the Government”.

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- ss 11 - 14: no discrimination by employers;
- s 17: no discrimination by qualifying bodies (which confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade);
- s 21: (without prejudice to the operation of the other provisions of Part III of Cap 487) no discrimination by the Government in the performance of its functions or the exercise of its powers;
- ss 22 - 23: no harassment;

- ss 26 - 27: no discrimination in the provision of facilities and services to the public;
- ss 28 - 29: no discrimination in disposal or management of premises;
- s 36: (without prejudice to the operation of the other provisions of Part IV of Cap 487) no discrimination by the Government in the performance of its functions or the exercise of its powers;
- ss 38 - 39: no sexual harassment in the provision of facilities or services etc;
- ss 41 - 45: no discriminatory practices; requests for information; no discriminatory advertisements; no instructions or pressure to discriminate;
- ss 46 - 47: no vilification;
- s 84: building approvals by public authority;

General Exceptions

- s 50: Special measures to ensure equal opportunities;
- ss 53 - 54: discriminatory training to persons in special need of training;
- s 57: acts done for purposes of protection of persons with disability;
- s 58: acts done under statutory authority to be exempted from certain provisions of Parts IV and V;
- s 60: specific exemptions under Schedule 5;

Sanctions

- s 48: employers and principals liable for discriminatory acts of employees or agents;
- s 49: persons liable if aiding unlawful acts under Cap 487;
- Part VII (ss 62 - 70): Equal Opportunities Commission - functions and powers, codes of practice and investigations;

- Part VIII (ss 71 - 82): Enforcement - general, enforcement notices, other enforcement by Commission, help for persons suffering discrimination or harassment etc. In particular,
 - s 72 (Civil proceedings in the District Court);
 - s 77 (injunction against persistent discrimination, harassment, vilification);
 - s 78 (enforcement proceedings to be brought by the Commission in the District Court for contravention of ss 42 - 45);
- s 83: validity and revision of contracts - terms void;
- s 72(5): offence of concealing or providing false information to the Commission for the purpose of its investigation;
- s 47: offence of serious vilification;
- s 68(5): offence of concealing or providing false information;
- ss 5(2) and 7(5) of the Disability Discrimination (Investigation and Conciliation) Rules: offence of failing to comply with directions of the Commission.

**Review of the Binding Effect of
the Social Workers Registration Ordinance, Cap. 505**

I. Name of the Ordinance

Social Workers Registration Ordinance, Cap. 505

II. Purpose of the Ordinance

To provide for the registration of social workers and disciplinary control of the professional activities of registered social workers.

III. Current binding effect

The whole Ordinance binds the HKSARG. (Section 3)

IV. Relevant sections of the Ordinance that impose obligations or liabilities

Section 17: qualification for registration

Sections 18-22: registration as a registered social worker

Sections 25-32: disciplinary proceedings

Sanctions

Section 35: it provides for a number of criminal offences under the Ordinance

- offence of using the description “registered social worker”, the initials “R.S.W.” or the description “social work” or “social worker” while not being a registered social worker;
- offence of fraudulently obtaining registration as a registered social worker;
- offence of advertising or representing as a registered social worker when one’s name is not on the Register of registered social worker.

**Review of the Binding Effect of
The Legislative Council Commission Ordinance (Cap. 443)**

I. Name of the Ordinance

The Legislative Council Commission Ordinance (Cap. 443)

II. Purpose of the Ordinance

To establish a Legislative Council Commission, and to provide for matters ancillary to and connected with such purpose.

III. Current binding effect

The whole Ordinance binds the Government by virtue of section 23 which reads:-

“This Ordinance binds the Government.”

IV. Relevant sections of the Ordinance that impose obligations or liabilities

- s 14(2) - power of the Director of Audit to require, from any person holding or being accountable for any documents or information in the custody of the Commission, such information and explanation as the Director considers reasonably necessary for the purpose of conducting an examination under s 14 (into the economy, efficiency and effectiveness with which the Commission has expended its resources in performing its functions and exercising its powers);
- s 17(1) - Subject to s 17(2), the Commission shall not, in relation to the formulation and execution of managerial and financial policies of it or the Secretariat, be subject to any direction or control of any person under s 14: (s 17(2) provides that the Legislative Council may by resolution give directions to the Commission in relation to the performance of its functions, etc);
- s 21 - unauthorized use of the Commission’s name subject to criminal sanction.

**Review of the Binding Effect of the
Arbitration Ordinance (Cap. 341)**

I. Name of the Ordinance

Arbitration Ordinance.

II. Purpose of the Ordinance

To make provision for arbitration in respect of civil matters (Long Title). The Ordinance sets out procedures for both domestic arbitration and international arbitration and incorporates relevant international conventions.

III. Current binding effect

The Ordinance (other than Parts III and IV) binds the Hong Kong Special Administrative Region Government (section 47, added by Ord. No. 75 of 1996, replacing the repealed section 2I by which Parts I, II and IIA bound the Crown).

IV. Relevant sections of the Ordinance that impose obligations or liabilities

s.2C - enforcement of settlement agreement

s.2GC - orders directing amount in dispute to be secured; inspection, photographing, preservation, custody, detention, etc. of relevant property; granting of interim injunctions or directing other interim measures to be taken

s.2GG - enforcement of awards, orders or decisions of arbitral tribunal

s.6 - stay of court proceedings and reference to arbitration where the matter in dispute is the subject of an arbitration agreement

s.23 - on appeal, to confirm, vary or set aside an arbitral award, or to remit the award for reconsideration by the arbitrator or umpire

s.23A - determination of questions of law arising in the course of a reference

s.24 - to remit an award for reconsideration by the arbitrator or umpire.
