

《市區重建局條例草案》

全體委員會審議階段

由規劃地政局局長動議的修正案條次建議修正案

- 2 在“項目”的定義中 —
- (a) 在(c)段中，刪去“已廢除條例第 5(2)(b)條所述種類”而代以“按照已廢除條例第 5(2)(b)條擬備”；
 - (b) 在(d)段中，刪去“已廢除條例第 13(1)條所述種類”而代以“按照已廢除條例第 13(1)條擬備”。
- 6 (a) 在第(1)款中，刪去“便藉發展而”。
- (b) 在第(2)款中 —
- (i) 在(e)段中，刪去“或修葺”而代以“、修葺、保存或修復”；
 - (ii) 刪去(k)段而代以 —

“(k) 在符合第 25 條的規定下，按市建局認為合適的條款及條件，將該局當其時擁有或持有的任何土地、建築物、宅院、物業單位、船隻、貨品及實產批給、出售、轉易、轉讓、退回、交出、批租、出租、特許他人使用、移轉或以其他方式處置；”。

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7 (a) 在第(1)款中，刪去“，包括主席及副主席（如有的話），”而代以“（包括主席及行政總監）”。

(b) 刪去第(5)款而代以 —

“（5） 如董事會的任何成員（包括主席及行政總監）在提交給董事會考慮的合約內有任何直接或間接的利害關係，而該合約是由或建議由市建局訂立，或是由或建議由該局的受僱人、代理人、合夥人或合作夥伴訂立，或是由或建議由該局設立的法人團體訂立的，則該成員須在董事會會議上披露其利害關係的性質，而該項披露須記入董事會會議紀錄。該成員如未經主席許可（在該成員是主席的情況下，則他如未經出席該次會議的過半數成員許可），不得參與董事會就該合約而進行的商議，且無論如何不得就有關該合約的任何問題投票。”。

(c) 在第(6)款中，刪去“亦不准投票，”。

9 刪去兩度出現的“主席”而代以“行政總監”。

16 刪去該條而代以 —

“16. 市建局須備存妥善的會計紀錄和擬備財務報表

(1) 市建局須備存正確地說明其財務往來及財政狀況的會計紀錄，以使 —

(a) 真實而中肯的財務報表得以不時擬備；及

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- (b) 該等報表得以方便而妥善地按照第 16B 條審計。

(2) 市建局須確保於每一財政年度終結後，在切實可行範圍內盡快（但無論如何須在該年度終結後 3 個月內）擬備以下財務報表 —

- (a) 真實而中肯地反映該局在該年度的收支情況的收支結算表；
- (b) 截至該年度終結時並真實而中肯地反映該局在該年度終結時的財政狀況的資產負債表。

(3) 市建局須確保該等財務報表符合財政司司長以書面通知該局的所有會計標準。

16A. 市建局須委任核數師

- (1) 市建局須委任一名核數師審計該局的帳目。
- (2) 當核數師職位出缺時，市建局須在切實可行範圍內盡快委任另一名核數師填補該空缺。

16B. 市建局的財務報表須予審計

- (1) 市建局須於每一財政年度終結後的 3 個月內，將就該年度擬備的財務報表呈交該局的核數師進行審計。
- (2) 在接獲市建局所呈交的財務報表後，該局的核數師須在切實可行範圍內盡快審計該等報表，並擬備該等報表的審計報告。

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(3) 核數師報告須述明根據該局的核數師的意見，該等財務報表是否妥善擬備，以致能真實而中肯地反映第 16(2)條所提述的事宜，以及符合根據第 16(3)條通知的會計標準（如有的話），如屬否者，則該報告須述明核數師得出該意見的理由。

(4) 市建局的核數師有權 —

- (a) 在任何合理時間取用該局的會計紀錄；及
- (b) 要求行政總監、執行董事及該局任何職員向該核數師提供他認為為進行審計而需要的解釋及資料。

(5) 在完成審計和擬備核數師報告後，市建局的核數師須在切實可行範圍內盡快 —

- (a) 將報告附連於或註明於經審計的財務報表；並
- (b) 將該等報表及該報告送遞市建局。

(6) 市建局須於每一財政年度終結後，在切實可行範圍內盡快（但無論如何須在該年度終結後 6 個月內）向財政司司長提交 —

- (a) 該局該年度的事務報告；
- (b) 該局該年度經審計的財務報表一份；及
- (c) 核數師就該等報表擬備的審計報告，

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而財政司司長須安排將該等報告及報表提交立法會省覽。”。

新條文 在第 V 部中，加入 —

“17A. 市區重建策略

(1) 為施行本部，局長可不時就進行市區重建而擬備市區重建策略。

(2) 局長須在根據第(1)款擬備的市區重建策略定案前以其決定的方式諮詢公眾。在修改或修訂該策略前，局長如認為該等修改或修訂的性質是屬輕微、技術性或微不足道的，則無需諮詢公眾。

(3) 在根據第(2)款進行諮詢的過程中，局長如認為披露某項資料並不符合公眾利益，則無需披露該項資料。”。

18 (a) 刪去第(3)(a)款而代以 —

“(a) 須依循就該等提案及項目的實施而根據第17A(1)條擬備的市區重建策略中列明的指引；”。

(b) 在第(4)(a)款中，刪去“加以修訂或不加修訂而”。

19(5)(a) 刪去“加以修訂或不加修訂而”。

20(1) 刪去“一個”而代以“兩個”。

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21 (a) 刪去第(3)及(4)款而代以 —

“(3) 市建局須考慮所有反對書，並須於公布期屆滿後 3 個月內，將下述項目呈交局長考慮 —

- (a) 有關發展項目；
- (b) 市建局對該等反對書所作的評議；
- (c) 任何沒有撤回的反對書；及
- (d) 市建局對因實施該發展項目而相當可能會帶來的影響作出的評估，包括評估就因該項目的實施而被遷徙的人的居所而言，如並無現存的適當居所提供給該等人士，則能否在實施該項目所引致的上述遷徙發生前作出安排提供該等居所。

(4) 局長須考慮有關發展項目及沒有撤回的反對書，並須因應該等反對書決定 —

- (a) 是否在不對該發展項目作出修訂的情況下授權市建局着手進行該項目；
- (b) 是否因應根據第(1)款提出的反對而修訂該發展項目；或

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(c) 是否拒絕授權進行該發展項目。”。

(b) 刪去第(6)、(7)及(8)款而代以 —

“(6) 如局長因應根據第(1)款提出的反對而根據第(4)(b)款修訂某發展項目，他須下令市建局於憲報刊登關於該項修訂的公告。如局長覺得該項修訂影響任何並非屬於反對者的土地，局長須向該土地的擁有人送達關於該項修訂的書面通知，或以廣告或其他方式向該擁有人發出局長認為適宜及切實可行的其他通知，以將該項修訂告知該擁有人。

(7) 第(6)款所述的其他土地的擁有人如欲反對根據第(4)(b)款作出的修訂 —

(a) 如該擁有人屬根據第(3)款呈交的原有發展項目所包含的土地的擁有人，則他須在局長根據第(6)款送達或發出通知後的14天內，將一份提出該項反對的陳述書送交局長；或

(b) 如該擁有人屬根據第(3)款呈交的原有發展項目所沒有包含的土地的擁有人，而其土地是受該項修訂影響的，則他須在局長根據第(6)款送達或發出通知後的兩個月內，將一份提出該項反對的陳述書送交局長，

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而局長須考慮該陳述書，並鑑於該項反對而決定是否授權市建局着手進行該發展項目(授權時可修訂該項目，亦可不修訂該項目)，或是否拒絕授權進行該發展項目，並須向該擁有人送達關於該項決定的書面通知。

(8) 凡局長根據第(4)(b)款修訂某發展項目，而有關修訂是包括擴大該項目的土地界線的，則就該項目中涉及根據第(3)款呈交的原有發展項目所沒有包含的土地的部分而言，其開始實施的日期是根據第(6)款於憲報刊登公告的日期。而就該項目中涉及根據第(3)款呈交的原有發展項目所包含的土地的部分而言，其開始實施的日期依然是第 20(2)條所規定的日期。”。

(c) 在第(9)款中，在“(4)”之後加入“(a)”。

(d) 加入 —

“(10) 凡局長根據第(4)(c)或(7)款拒絕授權進行某發展項目，他須下令市建局於憲報刊登關於撤回該項目的公告。市建局須向該土地的擁有人送達關於該項決定的書面通知，或以廣告或其他方式向該擁有人發出該局認為適宜及切實可行的其他通知，以將該項決定告知該擁有人。任何該等撤回不會影響任何新項目的擬備及根據第 20 條作出的關於該等項目的公布。”。

新條文

在第 V 部中，加入 —

“23A. 上訴委員會

(1) 行政長官可委出一個由他認為適宜擔任上訴委員會成員的人組成的委員團(“上訴委員團”)，負責聆訊根據第 23B 條提出的上訴。

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(2) 行政長官不得委任以下人士為上訴委員團成員 —

(a) 董事會的成員；

(b) 市建局的僱員；及

(c) 公職人員。

(3) 在第(2)款中，“公職人員”(public officer)不包括原訟法庭法官、原訟法庭特委法官、原訟法庭暫委法官或區域法院法官。

(4) 行政長官可委任一名上訴委員團成員為委員團主席，並可視其認為合適而委任一名或多於一名成員為委員團副主席。

(5) 行政長官可委任一名公職人員為上訴委員團秘書，他同時出任上訴委員會秘書。

(6) 上訴委員團的成員的任期不得超過 3 年，但有資格再獲委任。

(7) 上訴委員團的成員可隨時向行政長官發出書面通知而辭職。

(8) 在收到上訴通知書後，上訴委員團秘書須通知委員團主席，而在符合第(9)、(10)、(15)及(20)款的規定下，委員團主席須提名一個上訴委員會以聆訊該宗上訴。

(9) 上訴委員團主席如在某宗上訴中有直接或間接的利害關係，則不得提名上訴委員會以聆訊該宗上訴或出任該上訴委員會主席。

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(10) 在上訴委員團主席不在時，或如他在某宗上訴中有直接或間接的利害關係，則一名由他為此目的而指定的上訴委員團副主席須提名一個上訴委員會以聆訊該宗上訴。

(11) 第(9)款適用於上訴委員團副主席，一如其適用於委員團主席。

(12) 上訴委員團的成員如在某宗上訴中有直接或間接的利害關係，則不得被提名出任上訴委員會成員以聆訊該宗上訴或出任該上訴委員會的成員。

(13) 在符合第(9)、(10)、(12)、(15)及(20)款的規定下，上訴委員團主席或一名副主席加上 4 名其他成員即組成一個上訴委員會以聆訊上訴。

(14) 在符合第(9)、(10)、(15)及(20)款的規定下，上訴委員團主席或副主席須出任上訴委員會主席。

(15) 如上訴委員團主席及根據第(10)款獲指定的副主席在某宗上訴中有直接或間接的利害關係，行政長官可委任另一名在該宗上訴中沒有直接或間接利害關係的委員團副主席或成員，由其提名一個上訴委員會以聆訊該宗上訴和出任該上訴委員會主席。

(16) 須有至少 3 名成員(其中一名須為上訴委員會主席)出席上訴聆訊和就上訴作出裁定。

(17) 上訴委員會須聆訊上訴，而有待上訴委員會所裁定的問題須由聆訊上訴的成員以過半數票裁定。

(18) 如聆訊上訴的成員就任何待上訴裁定的問題所投的票出現票數均等，則上訴委員會主席除原有的一票外，還可投決定票。

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(19) 除非成員曾出席所有就有關上訴所舉行的上訴委員會聆訊，否則他不得參與裁定上訴委員會所面對的問題。

(20) 如上訴委員團主席因傷病或不在香港而不能行使其職能 —

(a) 則根據第(10)款獲指定的副主席須署理主席一職；或

(b) 而根據第(10)款獲指定的副主席亦不能署理主席一職，則行政長官可委任另一名副主席或成員署理主席一職。

(21) 上訴委員會主席及其成員可獲由財政司司長決定的薪酬及津貼。

24(1)(b)及 (2)(b) 在“(4)”之後加入“(a)”。

25 (a) 刪去第(1)款而代以 —

“(1) 除非行政長官會同行政會議已事先批准，否則市建局不得出售或處置為某發展計劃或發展項目而根據《收回土地條例》(第 124 章)收回的土地。”。

(b) 在第(2)款中，在“可就”之前加入“如認為為公眾利益而有此需要，”。

26 (a) 在第(1)款中，在“評估”之後加入“及為有關連的目的”。

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(b) 在第(4)款中，在“武力”之前加入“的合理”。

(c) 在第(7)款中 —

(i) 在(b)段中，刪去第二次出現的“或”；

(ii) 加入 —

“(ba) 提供他知道或理應知道在要項上屬虛假的資料；或”；

(iii) 在第(i)段中，刪去“罰款\$2,000”而代以“第1級罰款”；

(iv) 在第(ii)段中，刪去“罰款\$10,000”而代以“第3級罰款”。

29(2)(a) 刪去“罰款\$10,000”而代以“第3級罰款”。

32 (a) 在第(5)款中 —

(i) 刪去“(包括每份僱用合約及與任何人訂立的其他協議)”；

(ii) 刪去“及其他協議”。

(b) 加入 —

“(8A) 就任何與土發公司訂立並在緊接有關日期之前有效的僱傭合約而言，第(5)及(8)款的效力只是自該日期起在以市建局取代土發公司這一方面修改該合約，據此，根據第(5)及(8)款適用的僱傭合約而受僱於土發公司及市建局，在各方面均當作單一項連續受僱。”。

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附表

(a) 在第 1 條中 —

(i) 刪去第(1)款而代以 —

“(1) 行政長官須決定委任主席的條款及條件。”；

(ii) 加入 —

“(1A) 執行董事(包括行政總監)按照行政長官不時決定的執行董事委任條款及條件(包括薪酬及津貼)任職。”。

(b) 在第 7(3)及(4)條中,刪去“董事會主席”而代以“行政總監”。

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12	<p>(a) 在第(1)款中，在“市建局”之前加入，“在符合第(1A)款的規定下，”。</p> <p>(b) 加入 —</p> <p>“(1A) 市建局在行使第(1)款的權力時，須考慮 —</p> <p>(a) 因項目的實施而被遷徙的人士對在原地區居住的需求；及</p> <p>(b) 因項目的實施而業務被遷徙的人士對繼續經營其正營運中的業務的需求。”。</p>
新條文	<p>加入 —</p> <p>“23B. 上訴</p> <p>(1) 對某發展項目提出反對的人如因局長根據第 21(4)(a)或(7)條作出的決定而感到受屈，可在該決定根據第 21(9)條公布後 30 天內，藉向上訴委員會秘書提交上訴通知書（副本須送交局長）而提出上訴。</p> <p>(2) 第(1)款所指的上訴通知書須載有下述資料 —</p>

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- (a) 上訴人及其授權代表（如有的話）的姓名或名稱、地址及電話號碼；
- (b) 上訴所針對的決定的細節；
- (c) 上訴理由；
- (d) 所有擬傳召的證人的姓名、地址及電話號碼；及
- (e) 證人將提供的證據的詳情及將由上訴人或代表上訴人交出的文件及任何其他東西的詳情，該等詳情須足以確保上訴委員會及局長對上訴理由有全面而中肯的了解。

(3) 在收到第(1)款所指的通知書後，上訴委員團秘書須編定聆訊上訴的日期、時間及地點。聆訊的日期須在他收到該通知書後的 30 天至 60 天內。他並須就聆訊的日期、時間及地點給予上訴人及局長不少於 14 天的通知。

(4) 局長須在收到第(1)款所指的通知書副本後的 30 天內，向上訴委員團秘書及上訴人送達載有下述資料的通知書 —

- (a) 局長的授權代表的姓名或名稱、地址及電話號碼；
- (b) 反對上訴的理由；
- (c) 所有擬傳召的證人的姓名、地址及電話號碼；及

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- (d) 證人將提供的證據的詳情及將由局長或代表局長交出的文件及任何其他東西的詳情，該等詳情須足以確保上訴人及上訴委員會對反對上訴的理由有全面而中肯的了解。

(5) 在為聆訊上訴所定出的日期前的 7 天或之前，上訴人及局長須 —

- (a) 向上訴委員會秘書提交將在上訴聆訊中提供或交出作為證據的證人陳述書、文件及任何其他東西的副本；及

- (b) 互相向對方送達將在上訴聆訊中提供或交出作為證據的證人陳述書及文件的副本，並須提供關於將在上訴聆訊中提供或交出作為證據的已提交上訴委員會秘書的任何其他東西的細節。

(6) 上訴人可在所定出的聆訊日期或任何押後聆訊的日期前放棄整宗上訴或其任何部分，方法是就其擬放棄整宗上訴或其任何部分一事給予上訴委員會秘書及局長不少於 7 天的書面通知。

(7) 上訴聆訊須公開進行。

(8) 上訴人及局長可親自出席或由授權代表代為出席上訴委員會的聆訊。

(9) 在聆訊上訴前或聆訊上訴時，上訴委員會可 —

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- (a) 考慮和裁定某方應否可取用該方聲稱與上訴有關並由另一人管有或控制的文件、紀錄、帳簿或其他證物，並可命令該另一人讓該方取用上訴委員會認為合適的文件、紀錄、帳簿或其他證物；
- (b) 聽取經宣誓作出的證供，並可為證人監誓；
- (c) 接納或考慮任何陳述、文件、紀錄、帳簿、其他證物、資料或事項，不論它們可否在法庭獲接納為證據；及
- (d) 藉送達書面通知（“傳票”）傳召任何人出席於其席前，以提供證據和交出該傳票所指明的文件、紀錄、帳簿或其他證物。

(10) 被傳召在上訴中提供證據的證人，具有在原訟法庭民事訴訟中的證人所具有的一切權利及特權。

(11) 任何人 —

- (a) 根據第(9)(d)款獲送達傳票，而他 —
 - (i) 沒有充分因由而拒絕出席或忽略出席或拒絕交出或忽略交出任何規定交出的文件、紀錄、帳簿或其他證物；或

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(ii) 拒絕宣誓或提供證據；或

(b) 拒絕遵守上訴委員會根據第(9)款作出的命令，

即屬犯罪，可處第 5 級罰款。

(12) 上訴委員會如認為任何事宜與上訴有關，則不論該事宜曾否由任何一方提出，亦須予以查訊。

(13) 上訴委員會的決定不得因其任何成員在上訴聆訊時缺席而受質疑，但該成員須無參與上訴委員會的最終決定。

(14) 在完成上訴聆訊後，上訴委員會 —

(a) 可按其認為合適而確認、推翻或更改上訴所針對的決定；

(b) 在符合(c)段的規定下，可命令上訴的任何一方只須繳交上訴委員會因聆訊上訴及作出裁定而招致的費用及開支，而該費用及開支的數額，須由上訴委員會在考慮以下數額後釐定 —

(i) 根據第 23A(21)條付予上訴委員會主席及成員的薪酬及津貼的數額；及

(ii) 上訴委員會因聆訊上訴及作出裁定而招致的行政或其他

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費用及開支的數額。

- (c) 上訴委員會不得根據(b)段作出命令，規定上訴人繳交費用及開支，除非其信納由上訴人支付聆訊的費用及開支是合理和公平的。

(15) 上訴委員會如根據第(14)款作出關於費用及開支的命令，則須在命令內指明 —

- (a) 繳交款項的時限，該時限不得早於該命令日期後的 14 天；及
- (b) 款項須繳交予何人，如上訴委員會根據本條命令 —
- (i) 上訴人繳交費用及開支，該等費用及開支可作為民事債項向其追討；或
- (ii) 局長繳交費用及開支，該等費用及開支須自政府一般收入中支付。

(16) 如第(8)款所述的人沒有在所定出的聆訊上訴的日期出席聆訊，上訴委員會 —

- (a) 若信納缺席是出於合理因由，則可將聆訊押後至其認為合適的日期、時間及地點；

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- (b) 可就上訴進行聆訊；或
- (c) (如上訴人及上訴人的授權代表均缺席)可駁回上訴。

(17) 如上訴委員會根據第(16)(c)款駁回上訴，上訴人可在駁回上訴的命令作出的 14 天內，以書面向上訴委員會秘書申請要求上訴委員會覆核其決定。

(18) 在進行第(17)款所指的覆核時，上訴委員會如信納缺席是出於合理因由，則可撤銷有關命令，並編定一個其認為合適的日期、時間及地點以進行聆訊，而除非各方同意，該日期不得早於覆核日期後的 14 天。

(19) 上訴委員會秘書須為每宗上訴就以下事項備存書面紀錄 —

- (a) 上訴人的姓名或名稱；
- (b) 上訴理由；
- (c) 上訴人的授權代表(如有的話)的姓名或名稱；
- (d) 局長的授權代表的姓名或名稱；
- (e) 上訴每一方所傳召的證人的姓名；
- (f) 每名證人所提供的證據的概要；
- (g) 上訴委員會的決定及作出該決定的理由；及

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(h) 上訴委員會作出的命令。

(20) 上訴委員會秘書須將上訴委員會的決定、作出該決定的理由及上訴委員會作出的命令送達上訴人及局長。

(21) 上訴委員會秘書須就上訴委員會所作的下述決定在憲報刊登公告 —

(a) 第(14)款所提述的決定（如無人根據第(17)款申請覆核該決定）；或

(b) 上訴委員會經考慮第(17)款所指的覆核後作出的決定。

(22) 上訴委員會的任何通知或命令須由該上訴委員會的主席簽署發出。

(23) 如本條及第 23A 條並無就某事宜的實務或程序訂定條文，則上訴委員會主席可決定關於該事宜而適用於一般情況的實務或程序。

(24) 如本條及第 23A 條並無就某事宜的實務或程序訂定條文，則上訴委員會主席可就個別聆訊決定關於該事宜的實務或程序。”。

附表

加入 —

“3A. 董事會的會議

除非董事會認為其會議適宜以非公開形式進行，董事會的所有會議須以公開形式進行。”。

Annex XVII

URBAN RENEWAL AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning and Lands

<u>Clause</u>	<u>Amendment Proposed</u>
2	In the definition "project", in paragraphs (c) and (d) by deleting "of the description mentioned in" and substituting "prepared in accordance with".
6	(a) In subclause (1), by deleting "by way of development".
	(b) In subclause (2) -
	(i) in paragraph (e), by deleting "or repair" and substituting ", repair, preserve or restore";
	(ii) by deleting paragraph (k) and substituting -
	"(k) subject to section 25, grant, sell, convey, assign, surrender, yield up, demise, let, license, transfer or otherwise dispose of any land or building, messuages, tenements, vessels, goods and chattels for the time being owned or held by the Authority on such terms and conditions as the Authority thinks fit;".

<u>Clause</u>	<u>Amendment Proposed</u>
7	<p>(a) In subclause (1), by deleting "Deputy Chairman, if any" and substituting "Managing Director".</p> <p>(b) By deleting subclause (5) and substituting -</p> <p style="padding-left: 40px;">"(5) A member of the Board of the Authority, including the Chairman and the Managing Director, who is in any way directly or indirectly interested in a contract made or proposed to be made by the Authority, or in a contract made or proposed to be made by a servant or an agent or a partner of the Authority, or, by a body corporate established by the Authority which is brought up for consideration by the Board, shall disclose the nature of his interest at a meeting of the Board; and the disclosure shall be recorded in the minutes of the meeting of the Board, and the member shall not without the permission of the Chairman, and in the case of the Chairman, the permission of the majority of the members present at the meeting, take any part in any deliberation of the Board with respect to that contract and shall not in any event vote on any question concerning it."</p> <p>(c) In subclause (6), by deleting "neither required to withdraw from the relevant meeting nor permitted to vote" and substituting "not required to withdraw from the relevant meeting".</p>
9	By deleting "Chairman" where it twice appears and substituting "Managing Director".

Clause

Amendment Proposed

16 By deleting the clause and substituting -

**"16. Authority to keep proper
accounting records and to
prepare financial statements**

(1) The Authority shall keep such accounting records as correctly explain its financial transactions and financial position and so that -

- (a) true and fair financial statements can be prepared from time to time; and
- (b) those statements can be conveniently and properly audited in accordance with section 16B.

(2) The Authority shall ensure that the following financial statements are prepared as soon as practicable and in any case not later than 3 months after the end of each financial year -

- (a) an income and expenditure account that gives a true and fair view of the Authority's income and expenditure for that year;
- (b) a balance sheet as at the end of that year that gives a true and fair view of the Authority's financial position as at the end of that year.

(3) The Authority shall ensure that the financial statements comply with any accounting standards notified to the Authority in writing by the Financial Secretary.

ClauseAmendment Proposed**16A. Authority to appoint auditor**

(1) The Authority shall appoint an auditor to audit the accounts of the Authority.

(2) As soon as practicable after a vacancy occurs in the office of auditor, the Authority shall appoint another auditor to fill the vacancy.

16B. Authority's financial statements to be audited

(1) Not later than 3 months after the end of each financial year, the Authority shall submit the financial statements prepared for that year to the Authority's auditor for auditing.

(2) As soon as practicable after receiving the financial statements submitted by the Authority, the Authority's auditor shall audit those statements and prepare an auditor's report on audit of those statements.

(3) The auditor's report shall state whether or not the financial statements are, in the opinion of the Authority's auditor, properly drawn up so as to give a true and fair view of the matters referred to in section 16(2) and in compliance with the accounting standards, if any, notified under section 16(3) and, if not, the reasons for that opinion.

(4) The Authority's auditor is entitled -

(a) to have access at all reasonable times to the Authority's accounting records; and

Clause

Amendment Proposed

- (b) to require the Managing Director, the executive directors and any member of the staff of the Authority to provide the auditor with such explanations and information as the auditor considers necessary for the purpose of conducting the audit.

(5) As soon as practicable after completing the audit and preparing the auditor's report, the Authority's auditor shall -

- (a) attach the report to, or endorse the report on, the financial statements that were audited; and
- (b) deliver those statements and the report to the Authority.

(6) The Authority shall, as soon as practicable and in any case not later than 6 months after the end of each financial year, furnish -

- (a) a report of the affairs of the Authority for that year;
- (b) a copy of the audited financial statements thereof; and
- (c) the auditor's report on audit of those statements,

to the Financial Secretary who shall cause the same to be tabled in the Legislative Council."

ClauseAmendment Proposed

New

By adding in Part V -

"17A. Urban renewal strategy

(1) The Secretary may prepare from time to time an urban renewal strategy for the purposes of this Part relating to the carrying out of urban renewal.

(2) The Secretary shall consult the public before finalizing the urban renewal strategy prepared under subsection (1) in such manner as he may determine. The Secretary need not consult the public before revising or amending the urban renewal strategy prepared under that subsection if he considers that such revision or amendment is of a minor, technical or insignificant nature.

(3) In the course of consultation under subsection (2), the Secretary need not disclose information which, in his opinion, would not be in the public interest to disclose."

18

(a) By deleting subclause (3)(a) and substituting -

"(a) shall follow any guidelines set out in an urban renewal strategy prepared under section 17A(1) in relation to the implementation of those proposals and projects;"

(b) In subclause (4)(a), by deleting "with or without amendments".

19(5)(a)

By deleting "with or without amendments".

<u>Clause</u>	<u>Amendment Proposed</u>
20(1)	By deleting "one month" and substituting "2 months".
21	<p>(a) By deleting subclauses (3) and (4) and substituting -</p> <p style="padding-left: 40px;">"(3) The Authority shall consider all objections and shall, not later than 3 months after the expiration of the publication period, submit -</p> <ul style="list-style-type: none">(a) the development project;(b) the Authority's deliberations on the objections;(c) any objections which are not withdrawn; and(d) an assessment by the Authority as to the likely effect of the implementation of the development project including, in relation to the residential accommodation of persons who will be displaced by the implementation of the development project, an assessment as to whether or not, insofar as suitable residential accommodation for such persons does not already exist, arrangements can be made for the provision of such residential accommodation in advance of any such displacement which will result as the development project is implemented, <p style="padding-left: 40px;">to the Secretary for his consideration.</p>

ClauseAmendment Proposed

(4) The Secretary shall consider the development project and any objections which are not withdrawn and determine, consequent upon those objections, whether -

- (a) to authorize the Authority to proceed with the development project without any amendment;
- (b) to make an amendment to the development project to meet an objection raised under subsection (1); or
- (c) to decline to authorize the development project."

(b) By deleting subclauses (6), (7) and (8) and substituting -

"(6) Where the Secretary makes an amendment to a development project under subsection (4)(b) to meet an objection raised under subsection (1), he shall order the Authority to publish in the Gazette notice of the amendment to the development project. Where the amendment appears to the Secretary to affect any land, other than that of the objector, the Secretary shall serve notice in writing of that amendment on the owner of that other land or give such other notice by advertisement or otherwise as he deems desirable and practicable to the owner of that other land to inform that owner of the amendment.

(7) The owner of the other land mentioned in subsection (6) who wishes to object to the amendment made by the Secretary under subsection

Clause

Amendment Proposed

(4)(b) shall send to the Secretary a written statement of that objection within -

- (a) 14 days in the case of an owner of the land included in the original development project submitted to the Secretary under subsection (3); or
- (b) 2 months in the case of an owner of the land affected by the amendment made by the Secretary under subsection (4)(b) and not included in the original development project submitted to the Secretary under subsection (3),

after the service or giving of notice by the Secretary under subsection (6). The Secretary shall consider the written statement to determine, in view of that objection, whether to authorize the Authority to proceed with the development project with or without the amendment made by the Secretary or, whether to decline to authorize the development project and shall serve notice in writing of that determination on the owner who made the objection.

(8) Where the Secretary makes an amendment to a development project under subsection (4)(b) with amendments which include an expansion of the boundaries of the project, the commencement date of the implementation of the part of the project concerning the land not included in the original development project submitted to the Secretary under subsection (3) shall be the date when notice was published in the Gazette under subsection

ClauseAmendment Proposed

(6). The commencement date of the implementation of the part of the project concerning the land included in the original development project submitted to the Secretary under subsection (3) shall remain as provided under section 20(2).".

(c) In subclause (9), by adding "(a)" after "(4)".

(d) By adding -

"(10) Where the Secretary declines to authorize a development project under subsection (4)(c) or (7), he shall order the Authority to publish in the Gazette notice of withdrawal of the project. The Authority shall serve notice in writing of that decision on the owner of the land or give such other notice by advertisement or otherwise as the Authority deems desirable and practicable to the owner of the land to inform that owner of the decision. Any such withdrawal shall be without prejudice to the preparation of a new project and the publication thereof under section 20.".

New

By adding in Part V -

"23A. Appeal Board

(1) The Chief Executive may appoint a panel of persons ("the Appeal Board panel") whom he considers suitable to sit as members of an Appeal Board to hear an appeal under section 23B.

(2) The Chief Executive shall not appoint -

Clause

Amendment Proposed

- (a) a director of the Board of the Authority;
- (b) an employee of the Authority; or
- (c) a public officer,

to the Appeal Board panel.

(3) In subsection (2), "public officer" (公職人員) does not include a judge of the Court of First Instance, a recorder of the Court of First Instance, a deputy judge of the Court of First Instance or a District Judge.

(4) The Chief Executive may appoint a member of the Appeal Board panel as Chairman of the panel and may appoint one or more members as Deputy Chairmen of the panel as he thinks fit.

(5) The Chief Executive may appoint a public officer to be the secretary to the Appeal Board panel who at the same time serves as the secretary to an Appeal Board.

(6) Members of the Appeal Board panel shall be appointed for a term not exceeding 3 years but shall be eligible for reappointment.

(7) Members of the Appeal Board panel may resign at any time by notice in writing given to the Chief Executive.

(8) On receipt of a notice of appeal, the secretary to the Appeal Board panel shall notify the Chairman of the panel who shall, subject to subsections (9), (10), (15) and (20), nominate an Appeal Board to hear the appeal.

ClauseAmendment Proposed

(9) The Chairman of the Appeal Board panel shall not nominate an Appeal Board to hear an appeal or act as its Chairman if he has a direct or indirect interest in the appeal.

(10) A Deputy Chairman of the Appeal Board panel designated for the purpose by the Chairman of the panel shall, in the absence of the Chairman of the panel, or if the Chairman of the panel has a direct or indirect interest in an appeal, nominate an Appeal Board to hear the appeal.

(11) Subsection (9) shall apply to a Deputy Chairman of the Appeal Board panel as it applies to the Chairman of the panel.

(12) A member of the Appeal Board panel shall not be nominated to an Appeal Board to hear an appeal or act as its member if he has a direct or indirect interest in the appeal.

(13) Subject to subsections (9), (10), (12), (15) and (20), the Chairman or a Deputy Chairman and 4 other members of the Appeal Board panel shall constitute an Appeal Board to hear an appeal.

(14) Subject to subsections (9), (10), (15) and (20), the Chairman or a Deputy Chairman of the Appeal Board panel shall act as the Chairman of an Appeal Board.

(15) If the Chairman of the Appeal Board panel and the Deputy Chairman designated under subsection (10) have a direct or indirect interest in an appeal, the Chief Executive may appoint another Deputy Chairman or another member of the panel, who does not

Clause

Amendment Proposed

have a direct or indirect interest in the appeal, to nominate an Appeal Board to hear the appeal and to act as the Chairman of the Appeal Board.

(16) At least 3 members, one of whom must be the Chairman of the Appeal Board, shall be present to hear and determine an appeal.

(17) The Appeal Board shall hear the appeal and a majority of the members hearing the appeal shall determine questions before it.

(18) Where there is an equality of votes in respect of any question to be determined in an appeal, the Chairman of the Appeal Board shall have a casting vote in addition to his original vote.

(19) A member shall not take part in determining the questions before the Appeal Board unless he has been present at all the Appeal Board hearings held in respect of the appeal concerned.

(20) If the Chairman of the Appeal Board panel is precluded by illness or absence from Hong Kong from exercising his functions -

- (a) the Deputy Chairman designated under subsection (10) shall act as Chairman; or
- (b) if the Deputy Chairman designated under that subsection is unable to act as Chairman, the Chief Executive may appoint another Deputy Chairman or another member to act as Chairman.

ClauseAmendment Proposed

(21) The Chairman and the members of an Appeal Board may be paid such remuneration and allowances as the Financial Secretary may determine.

- 24(1)(b) and (2)(b) By adding "(a)" after "(4)".
- 25 (a) In subclause (1), by deleting "it has" and substituting "has been".
- (b) In subclause (2), by adding "if he considers the public interest so requires," before "in granting".
- 26 (a) In subclause (1), by adding "and for connected purposes" before the full stop.
- (b) In subclause (4), by adding "reasonable" before "force".
- (c) In subclause (7) -
- (i) in paragraph (b), by deleting "or";
- (ii) by adding -
- "(ba) gives such information which he knows or reasonably ought to know to be false in a material particular; or";
- (iii) in paragraph (i), by deleting "of \$2,000" and substituting "at level 1";

<u>Clause</u>	<u>Amendment Proposed</u>
	(iv) in paragraph (ii), by deleting "of \$10,000" and substituting "at level 3".
29(2)(a)	By deleting "of \$10,000" and substituting "at level 3".
32	(a) In subclause (5) - (i) by deleting ", including every employment contract or other agreement with any person,"; (ii) by deleting "or other agreement". (b) By adding - "(8A) The effect of subsections (5) and (8) in relation to any employment contract with the Land Development Corporation which was in force immediately before the date of commencement of Parts II to VIII of this Ordinance is merely to modify that contract, as from that date, by substituting the Authority for the Land Development Corporation and, accordingly, employment with the Land Development Corporation and the Authority under an employment contract to which those subsections apply is deemed for all purposes to be a single continuing employment."
Schedule	(a) In section 1 - (i) by deleting subsection (1) and substituting - "(1) The Chief Executive shall determine the terms and conditions of appointment of the Chairman.";

ClauseAmendment Proposed

(ii) by adding -

"(1A) 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."

(b) In section 7(3) and (4), by deleting "Chairman of the Board of the Authority" and substituting "Managing Director".

URBAN RENEWAL AUTHORITY BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Wing-tat

<u>Clause</u>	<u>Amendment Proposed</u>
12	<p>(a) In subclause (1), by deleting "The" and substituting "Subject to subsection (1A), the".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(1A) The Authority, when exercising the power under subsection (1), shall consider -</p> <p style="padding-left: 80px;">(a) the needs of those persons who will be displaced by the implementation of a project for residential accommodation in the same locality; and</p> <p style="padding-left: 80px;">(b) where there is a business which will be displaced by the implementation of a project, the needs of those persons to operate the business as a going concern."</p>
New	<p>By adding -</p> <p style="padding-left: 40px;">"23B. Appeals</p> <p style="padding-left: 80px;">(1) An objector to a development project who is aggrieved by a decision of the Secretary under</p>

ClauseAmendment Proposed

section 21(4)(a) or (7) may appeal by lodging a notice of appeal with the secretary to the Appeal Board panel, with a copy to the Secretary, within 30 days after notification of the Secretary's decision under section 21(9).

(2) A notice of appeal under subsection (1) shall contain the following information -

- (a) the name, address and telephone number of the appellant and of the appellant's authorized representative, if any;
- (b) details of the decision appealed against;
- (c) the grounds of the appeal;
- (d) the name, address and telephone number of all proposed witnesses; and
- (e) particulars of the evidence to be given by the witnesses and documents and any other thing to be produced by or on behalf of the appellant sufficient to ensure that the Appeal Board and the Secretary are fully and fairly informed of the grounds of appeal.

(3) On receipt of a notice under subsection (1), the secretary to the Appeal Board panel shall fix a date, time and place for the hearing of the appeal, which shall be a date not sooner than 30 days but not more than 60 days of receipt of such notice and shall give at least 14 days' notice thereof to the appellant and the Secretary.

Clause

Amendment Proposed

(4) The Secretary shall, within 30 days of receipt of a copy of a notice under subsection (1), serve on the secretary to the Appeal Board panel and on the appellant a notice containing the following information -

- (a) the name, address and telephone number of the Secretary's authorized representative;
- (b) the grounds for opposing the appeal;
- (c) the name, address and telephone number of all proposed witnesses; and
- (d) particulars of the evidence to be given by the witnesses and documents and any other thing to be produced by or on behalf of the Secretary sufficient to ensure that the appellant and the Appeal Board are fully and fairly informed of the grounds of opposing the appeal.

(5) Not less than 7 days prior to the date set for the hearing of the appeal, the appellant and the Secretary shall -

- (a) lodge with the secretary to the Appeal Board panel a copy of witness statements, documents and any other thing to be given or produced in evidence at the hearing of the appeal; and

ClauseAmendment Proposed

- (b) serve on each other a copy of witness statements and documents and shall give details of any other thing lodged with the secretary to the Appeal Board panel, which statement, document or thing is to be given or produced in evidence at the hearing of the appeal.
- (6) The appellant may abandon the whole or any part of his appeal before the date set for hearing or any adjourned date by giving the secretary to the Appeal Board panel and the Secretary not less than 7 days' notice in writing of his intention to abandon the whole or part of the appeal.
- (7) The hearing of an appeal shall be in public.
- (8) The appellant and the Secretary may appear before an Appeal Board in person or by an authorized representative.
- (9) Prior to or at the hearing of an appeal, an Appeal Board may -
- (a) consider and determine whether a party should have access to documents, records, books of account or other exhibits which the party claims are relevant to the appeal and which are in the possession or control of another person and order that other person to give the party access to such documents, records, books of

Clause

Amendment Proposed

account or other exhibits as it may think fit;

(b) hear evidence on oath and administer any oath necessary to swear in a witness;

(c) admit or take into account any statement, document, record, book of account, other exhibit, information or matter whether or not it would be admissible as evidence in a court of law; and

(d) by notice in writing (a "summons"), summon any person to appear before it to give evidence and to produce any document, record, book of account or other exhibit specified in the summons.

(10) A witness who is called to give evidence at an appeal shall have all of the rights and privileges of a witness in a civil action in the Court of First Instance.

(11) Any person who -

(a) is served with a summons under subsection (9)(d) and who -

(i) refuses or neglects without sufficient cause to appear or to produce any document, record,

ClauseAmendment Proposed

book of account or other exhibit required to be produced; or

(ii) refuses to be sworn or give evidence; or

(b) refuses to comply with an order of the Appeal Board under subsection (9),

commits an offence and is liable to a fine at level 5.

(12) The Appeal Board shall inquire into any matter which it may consider relevant to the appeal, whether or not it has been raised by a party.

(13) No decision of an Appeal Board shall be questioned by virtue of the absence of a member of the Appeal Board during the hearing of an appeal provided that member does not participate in the final decision of the Appeal Board.

(14) At the completion of the hearing of an appeal, the Appeal Board -

(a) may confirm, reverse or vary the decision appealed against as it thinks fit;

(b) may, subject to paragraph (c), order any party to the appeal to pay only the costs and expenses incurred by the Appeal Board in hearing and determining the appeal, and the amount of such

Clause

Amendment Proposed

costs and expenses shall be determined by the Appeal Board having regard to -

- (i) the amount of remuneration and allowances payable to the Chairman and the members of the Appeal Board under section 23A(21); and
 - (ii) the amount of administrative or other costs and expenses incurred by the Appeal Board in relation to the hearing and determination of an appeal.
- (c) shall not make an order under paragraph (b) against the appellant unless it is satisfied that it is reasonable and just for the appellant to bear the costs and expenses of the hearing.

(15) Where an Appeal Board makes an order for costs and expenses under subsection (14), the Appeal Board shall specify in the order -

- (a) the time limit for making payment, not being earlier than 14 days from the date of the order; and

ClauseAmendment Proposed

(b) the person to whom payment shall be made. Where an order for costs and expenses under this section is made against -

(i) the appellant, the amount of the costs and expenses shall be recoverable as a civil debt; or

(ii) the Secretary, the amount of the costs and expenses shall be paid out of the general revenue.

(16) If a person mentioned in subsection (8) fails to appear on a date set for the hearing of an appeal, an Appeal Board may -

(a) if it is satisfied that the failure to appear is due to reasonable cause, adjourn the hearing to a date, time and place that it thinks fit;

(b) proceed to hear the appeal; or

(c) dismiss the appeal, if the person who fails to appear as stated above is the appellant or the appellant's authorized representative.

(17) If an Appeal Board dismisses an appeal under subsection (16)(c), an appellant may, within 14 days of the making of the order dismissing the appeal, apply in

Clause

Amendment Proposed

writing to the secretary to the Appeal Board for the Appeal Board to review its decision.

(18) On a review under subsection (17), the Appeal Board may, if it is satisfied that the failure to appear was due to reasonable cause, set aside the order and fix a date, time and place as it thinks fit for the hearing, and, unless the parties agree, the date shall be not less than 14 days from the date of the review.

(19) The secretary to the Appeal Board shall keep a written record for each appeal of -

- (a) the name of the appellant;
- (b) grounds of appeal;
- (c) the name of the appellant's authorized representative, if any;
- (d) the name of the Secretary's authorized representative;
- (e) the name of any witness called by either party to the appeal;
- (f) an outline of the evidence of each witness;
- (g) the decision of the Appeal Board and the reasons for the decision; and
- (h) any orders made by the Appeal Board.

ClauseAmendment Proposed

(20) The secretary to the Appeal Board shall serve on both the appellant and the Secretary the decision of the Appeal Board, the reasons for the decision and any orders made by the Appeal Board.

(21) The secretary to the Appeal Board shall publish in the Gazette notice of decision of the Appeal Board concerning -

- (a) any decision referred to in subsection (14), in the case where no review of the decision is applied under subsection (17); or
- (b) any decision of the Appeal Board after consideration of the review under subsection (17).

(22) Any notice or order of an Appeal Board shall be issued under the hand of the Chairman of the Appeal Board.

(23) The Chairman of the Appeal Board panel may, as regards the general application by all, determine the practice or procedure in relation to a matter if provision has not been made under this section and section 23A for the practice or procedure in respect thereof.

(24) The Chairman of an Appeal Board may, as regards a particular hearing, determine the practice or procedure in relation to a matter if provision has not been made under this section and section 23A for the practice or procedure in respect thereof."

Clause

Amendment Proposed

Schedule By adding -

"3A. Meetings of the Board of Authority

All meetings of the Board of the Authority shall be open to the public unless the Board of the Authority is satisfied that it is desirable for the meeting to be held in private."

附件 XVIII

《2000 年知識產權（雜項修訂）條例草案》

全體委員會審議階段

由工商局局長動議的修正案

<u>條次</u>	<u>建議修正案</u>
1(2)	刪去“Trade”而代以“Commerce”。
2(c)	刪去“買賣”而代以“經營”。
3(b)	刪去“買賣”而代以“經營”。
4(b)	刪去“買賣”而代以“經營”。
5(b)	刪去“買賣”而代以“經營”。
6(b)	刪去“買賣”而代以“經營”。
7(c)	刪去“買賣”而代以“經營”。
新條文	加入 —

“7A. 第 118 條所訂罪行的罰則

第 119(1)條現予修訂，在“經”之後加入“循公訴程序”。

條次

建議修正案

8(b) 刪去“買賣”而代以“經營”。

新條文 加入 —

“8A. 次要定義

第 198 條現予修訂 —

(a) 將其重編為第 198(1)條；

(b) 加入 —

“(2) 在第 31(2)、
32(3)、95(1A)、96(6A)、
109(1A)、118(8A) 及
120(2A) 條中，“經營”
(*dealing in*) 包括買入、出
售、出租、輸入、輸出及
分發。”。

8B. 界定詞句的索引

第 199 條現予修訂 —

(a) 廢除所有“198”而代以
“198(1)”；

(b) 加入 —

“經營 第 198(2)
條”。

9(b) 刪去“買賣”而代以“經營”。

條次

建議修正案

10(b) 刪去“買賣”而代以“經營”。

11(b) 刪去“買賣”而代以“經營”。

新條文 加入 —

“11A. 與版權條文中的詞句具
有相同涵義的詞句

第 238 條現予修訂，加入 —

“(1A) 在第 207(1A)、211(1A)及
228(1A)條中，“經營”(dealing in)包括買入、
出售、出租、輸入、輸出及分發。”。

11B. 界定詞句的索引

第 239 條現予修訂 —

(a) 廢除相對“業務”一詞的
“198”而代以“198(1)”；

(b) 加入 —

“經營 第 238(1A)
條”。“。

12 刪去(b)段而代以 —

“(b) 加入 —

條次

建議修正案

“(6) 就第(2)(a)款而言，有關的貿易或業務是否包含經營經特定設計或改裝以規避各形式的防止複製的保護措施的器件或設施，並不具關鍵性。

(7) 在第(6)款中，“經營”(dealing in)包括買入、出售、出租、輸入、輸出及分發。”。

新條文 加入 —

“12A. 版權：過渡性及保留條文

附表 2 第 40 段現予修訂，廢除“198”而代以“198(1)”。

25 (a) 在建議的第 31C(1)條中，在“權”之後加入“或合理辯解”。

(b) 在建議的第 31D 條之後加入 —

“31E. 展示告示

(1) 公眾娛樂場所的管理人須展示並保持展示兼具中英文本的告示，告示的大意為禁止在該場所未經授權而管有攝錄器材，而告示須採用訂明的格式及載有訂明的陳述。

(2) 管理人展示第(1)款所提述的告示的方式及位置均須符合規例的規定。

(3) 管理人須維持第(1)款所提述的告示是清晰可讀及處於良好狀態的。

條次建議修正案

(4) 任何管理人違反第(1)、(2)或(3)款，即屬犯罪，一經定罪，可處第2級罰款。

(5) 在本條中，“管理人”(manager)亦包括持有根據《公眾娛樂場所條例》(第172章)就有關的公眾娛樂場所批出的牌照的人，及根據該條例須就該場所持有該牌照的人。”。

(c) 在建議的第31E條中 —

(i) 將其重編為第31F條；

(ii) 在第(2)(a)及(3)(b)款中，刪去“第31C條”而代以“本部”。

26 刪去“31E”而代以“31F”。

新條文 加入 —

“28A. 規例

第38條現予修訂 —

(a) 在(a)段中，廢除“及”；

(b) 加入 —

“(aa) 以施行本條例中預期或授權就任何事宜訂立規例的條文；及”。

29 刪去“disc”而代以“discs”。

Annex XVIII

**INTELLECTUAL PROPERTY (MISCELLANEOUS
AMENDMENTS) BILL 2000**

COMMITTEE STAGE

Amendments to be moved by the Secretary for Trade and Industry

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "Trade" and substituting "Commerce".
2(c)	By deleting "買賣" and substituting "經營".
3(b)	By deleting "買賣" and substituting "經營".
4(b)	By deleting "買賣" and substituting "經營".
5(b)	By deleting "買賣" and substituting "經營".
6(b)	By deleting "買賣" and substituting "經營".
7(c)	By deleting "買賣" and substituting "經營".
New	By adding -

**"7A. Penalties for offences under
section 118**

Section 119(1) is amended by adding "on indictment"
after "conviction".

ClauseAmendment Proposed

8(b) By deleting "買賣" and substituting "經營".

New By adding -

"8A. Minor definitions

Section 198 is amended -

- (a) by renumbering it as section 198(1);
- (b) by adding -

"(2) In sections 31(2), 32(3), 95(1A), 96(6A), 109(1A), 118(8A) and 120(2A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing."

8B. Index of defined expressions

Section 199 is amended -

- (a) by repealing "198" wherever it appears and substituting "198(1)";
- (b) by adding -

"dealing in section 198(2)".

9(b) By deleting "買賣" and substituting "經營".

<u>Clause</u>	<u>Amendment Proposed</u>
10(b)	By deleting "買賣" and substituting "經營".
11(b)	By deleting "買賣" and substituting "經營".
New	By adding - "11A. Expressions having same meaning as in copyright provisions Section 238 is amended by adding - "(1A) In sections 207(1A), 211(1A) and 228(1A), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing." 11B. Index of defined expressions Section 239 is amended by adding - (a) by repealing "198" opposite the expression "business" and substituting "198(1)"; (b) by adding - "dealing in section 238(1A)".
12	By deleting paragraph (b) and substituting - "(b) by adding -

ClauseAmendment Proposed

"(6) It is immaterial for the purpose of subsection (2)(a) whether or not the trade or business consists of dealing in devices or means specifically designed or adapted to circumvent forms of copy-protection.

(7) In subsection (6), "dealing in" (經營) includes buying, selling, letting for hire, importing, exporting and distributing.". ".

New

By adding -

"12A. Copyright: Transitional provisions and savings

Schedule 2 is amended, in paragraph 40, by repealing "198" and substituting "198(1)". ".

25

- (a) In the proposed section 31C(1), by adding "or reasonable excuse" after "lawful authority".
- (b) By adding after the proposed section 31D -

"31E. Display of notices

(1) The manager of a place of public entertainment shall display and keep displayed notices, in English and Chinese, to the effect that the unauthorized possession of video recording equipment in that place is prohibited, which notices shall be in the prescribed form and include the prescribed statements.

Clause

Amendment Proposed

(2) The manager shall display the notices referred to in subsection (1) in the manner and in the locations required by the regulations.

(3) The manager shall maintain the notices referred to in subsection (1) in legible condition and good order.

(4) Any manager who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 2.

(5) In this section, "manager" (管理人) also includes any person who holds or is required to hold a licence granted under the Places of Public Entertainment Ordinance (Cap. 172) in relation to the place of public entertainment."

(c) In the proposed section 31E -

(i) by renumbering it as section 31F;

(ii) in subsections (2)(a) and (3)(b), by deleting "section 31C" and substituting "this Part".

26 By deleting "31E" and substituting "31F".

New By adding -

"28A. Regulations

Section 38 is amended -

ClauseAmendment Proposed

(a) in paragraph (a), by repealing "and";

(b) by adding -

"(aa) for the purposes of any provision of this Ordinance which contemplates or authorizes the making of regulations with respect to any matter; and".

29

By deleting "disc" and substituting "discs".

附件 XIX

《1999 年法律適應化修改（第 12 號）條例草案》

全體委員會審議階段

由工商局局長動議的修正案

條次

建議修正案

附表 4 刪去第 9 條。

附表 11 刪去第 5 條。

Annex XIX

ADAPTATION OF LAWS (NO. 12) BILL 1999

COMMITTEE STAGEAmendments to be moved by the Secretary for Trade and IndustryClauseAmendment Proposed

Schedule 4 By deleting section 9.

Schedule 11 By deleting section 5.

附件 XX

《1999 年法律適應化修改（第 13 號）條例草案》

全體委員會審議階段

由工商局局長動議的修正案

條次

建議修正案

附表 2 刪去第 37 條。

附表 3 刪去第 8 條。

Annex XX

ADAPTATION OF LAWS (NO. 13) BILL 1999

COMMITTEE STAGEAmendments to be moved by the Secretary for Trade and IndustryClauseAmendment Proposed

Schedule 2 By deleting section 37.

Schedule 3 By deleting section 8.

附件 XXI

《證人保護條例草案》

全體委員會審議階段

由保安局局長動議的修正案

條次

建議修正案

- 2 (a) 在“證人”的定義的(a)段中，刪去“政府”。
- (b) 加入 —
- ““委員會”(board)指根據第 14 條設立的委員會；”。
- 4(3) (a) 在“須顧及”之前加入“除須顧及該證人所面對的可見危險的性質外，還”。
- (b) 在(e)段中，在未處加入“及”。
- (c) 刪去(f)段。
- 4 刪去第(4)款而代以 —
- “(4) 如 —
- (a) 某父或母、監護人或其他人依據第(2)(c)(i)或(ii)款簽署諒解備忘錄；而
- (b) 該備忘錄所關乎的證人被納入保護證人計劃內，並且在他年滿 18 歲或具有法律行為能力（視屬何情況而定）之時或之後仍是參與者，

條次建議修正案

則批准當局可在該參與者年滿 18 歲或具有法律行為能力（視屬何情況而定）之時或之後要求他簽署另一份諒解備忘錄。

(5) 凡批准當局應某證人提出的要求而考慮是否將該證人納入保護證人計劃內，並且決定不將該證人納入該計劃內，則批准當局須採取合理步驟以書面將其決定通知該證人。”。

5 (a) 刪去第(2)(a)款而代以 —

“(a) 要求該證人接受心理或精神檢驗，以及將檢驗結果備呈批准當局；或”。

(b) 加入 —

“(3) 除第(1)及(2)款施加的規定外，批准當局還可要求任何證人接受醫學測試或檢驗，以及將測試或檢驗結果備呈批准當局，使一旦該證人被納入保護證人計劃內，批准當局可取得所需資料。”。

6(2)(a) 刪去第(iv)節。

8 (a) 在第(2)款中，刪去“另立”而代以“定立”。

(b) 加入 —

“(2A) 凡批准當局應某參與者提出的要求而考慮是否為其定立新身分，並且決定不為該參與者定立新身分，則批准當局須採取合理步驟以書面將其決定通知該參與者。”。

條次

建議修正案

(c) 在第(3)款中，刪去兩度出現的“另立”而代以“定立”。

(d) 加入 —

“(3A) 如參與者未滿 18 歲或因其他原因而並無法律行為能力簽署該份新的諒解備忘錄，則該份備忘錄須按第 4(2)(c)(i)或(ii)條（視情況所需而定）規定的方式簽署，如該參與者在年滿 18 歲或具有法律行為能力（視屬何情況而定）之時或之後仍是參與者，則批准當局可在該時候要求該參與者簽署另一份諒解備忘錄。”。

(e) 在第(4)及(5)款中，刪去兩度出現的“另立”而代以“定立”。

(f) 在第(6)款中，刪去“this Ordinance”而代以“the Ordinance”。

9 (a) 在第(2)款中 —

(i) 刪去“須”而代以“可”；

(ii) 刪去兩度出現的“另立”而代以“定立”。

(b) 在第(4)款中，刪去“former identity”而代以“original identity”。

10 刪去所有“former identity”而代以“original identity”。

11(2) 刪去“意向”而代以“決定”。

條次建議修正案

12 (a) 在第(1)及(3)(a)款中，刪去“former identity”而代以“original identity”。

(b) 加入 —

“(3A) 凡任何前參與者恢復原本身分，而該人就其在保護證人計劃下定立的身分（“新身分”）有尚未行使的法律權利或尚未履行的法律義務，或受制於法律限制，則第 9 條適用於該等權利、義務及限制，且批准當局可採取假若該等權利、義務及限制是在新身分定立之前產生他便可採取的行動。”。

13 (a) 在第(1)款中 —

(i) 在(a)段中，刪去“或”；

(ii) 在(b)段中，刪去句號而代以“；或”；

(iii) 加入 —

“(c) 不為身為參與者的他定立新身分。”；

(iv) 刪去“處長或專員為此而指定的較高級人員”而代以“委員會”。

(b) 在第(3)款中，刪去“處長或專員根據第(1)款指定的人員”而代以“委員會”。

(c) 在第(4)款中，在“計劃內”之後加入“或不為某參與者定立新身分”。

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14 刪去該條而代以 —

“14. 委員會的設立

(1) 現設立一個委員會，負責覆核第 13(1)(a)、(b)及(c)條所提述的批准當局的決定。

(2) 委員會 —

(a) 須由以下人士組成 —

(i) 一名由處長或專員所指定的職級高於批准當局的人員；及

(ii) 2 名不是公職人員的人士；及

(b) 亦可有由主席決定的屬公職人員或不是公職人員的額外成員，

而(a)(ii)及(b)段所提述的成員須按照第(5)款規定的程序從第(4)款所提述的小組中挑選。

(3) 第(2)(a)(i)款所提述的人員出任委員會主席。

(4) 行政長官須為第(2)(a)(ii)及(b)款的施行委任他認為合適數目的公職人員及其他人士組成一個小組。

(5) 不是公職人員的小組成員須按照其英文姓氏的字母次序輪流被挑選出任委員會成員。除該等成員外，主席可按他認為合適的方式挑選屬公職人員的小組成員出任委員會成員。

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(6) 根據第(4)款作出的委任須在憲報公布。

(7) 委員會須覆核根據第 13(3)條送交的文件，並須將其對被覆核的決定予以確認或推翻的決定，告知批准當局及要求覆核有關決定的人。

(8) 凡批准當局的決定被推翻，他須相應地更改其決定。

(9) 委員會可訂立其覆核決定的程序。”。

15(b) 在“執法機構”之前加入“在香港或香港以外的”。

17 加入 —

“(5A) 除經律政司司長同意外，不得就第(1)(b)款所訂的罪行提起法律程序。”。

19 (a) 在第(1)款中，刪去在(a)段之前的所有字句而代以 —

“(1) 凡參與者在法律程序中為特區作供，主持法律程序的法官或裁判官可應控方單方面的申請，授權警務人員或廉政公署人員要求所有欲進入法庭內的公眾人士 —”。

(b) 加入 —

“(1A) 根據第(1)款提出的申請須在內庭聆訊。”。

(c) 在第(2)款中，在“則該人員”之後加入“在符合法官或裁判官的指示下”。

Annex XXI

WITNESS PROTECTION BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of "witness", in paragraph (a), by deleting "Government" and substituting "HKSAR".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">""board" (委員會) means the board established under section 14;"</p>
4	<p>(a) In subclause (3) -</p> <p style="padding-left: 40px;">(i) by deleting "The" and substituting "In addition to the nature of the perceived danger to the witness, the";</p> <p style="padding-left: 40px;">(ii) in paragraph (e), by adding "and" at the end;</p> <p style="padding-left: 40px;">(iii) by deleting paragraph (f).</p> <p>(b) By deleting subclause (4) and substituting -</p> <p style="padding-left: 40px;">"(4) If -</p> <p style="padding-left: 80px;">(a) a parent, guardian or other person signs a memorandum of understanding pursuant to subsection (2)(c)(i) or (ii); and</p>

ClauseAmendment Proposed

- (b) the witness to which the memorandum relates is included in the witness protection programme and remains a participant on or after reaching 18 years or having legal capacity, as the case may be,

the approving authority may require the participant to sign another memorandum of understanding on or after reaching 18 years or having legal capacity, as the case may be.

(5) Where the approving authority considers a witness for inclusion in the witness protection programme pursuant to a request made by the witness and decides not to include the witness in the witness protection programme, he shall take reasonable steps to notify the witness in writing of his decision."

- 5 (a) By deleting subclause (2)(a) and substituting -

"(a) require a witness to undergo psychological or psychiatric examinations and make the results available to the approving authority; or"

- (b) By adding -

"(3) In addition to the requirements under subsections (1) and (2), the approving authority may require a witness to undergo medical tests or examinations and make the results available to the approving authority to obtain information that may be needed in the event that the witness is included in the witness protection program."

<u>Clause</u>	<u>Amendment Proposed</u>
6(2)(a)	By deleting subparagraph (iv).
8	<p>(a) In subclause (2), by deleting "另立" and substituting "定立".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(2A) Where the approving authority considers establishing a new identity for a participant pursuant to a request made by the participant and decides not to establish a new identity for him, he shall take reasonable steps to notify the participant in writing of his decision."</p> <p>(c) In subclause (3), by deleting "另立" where it twice appears and substituting "定立".</p> <p>(d) By adding -</p> <p style="padding-left: 40px;">"(3A) If the participant is under 18 years or otherwise lacks legal capacity to sign the memorandum, it shall be signed in the manner as provided for in section 4(2)(c)(i) or (ii) (as the case may require), and if the participant remains a participant on or after reaching 18 years or having legal capacity, as the case may be, the approving authority may require him to sign another memorandum of understanding at that time."</p> <p>(e) In subclauses (4) and (5), by deleting "另立" where it twice appears and substituting "定立".</p> <p>(f) In subclause (6), by deleting "this Ordinance" and substituting "the Ordinance".</p>

<u>Clause</u>	<u>Amendment Proposed</u>
9	<p>(a) In subclause (2) -</p> <p>(i) by deleting "shall" and substituting "may";</p> <p>(ii) by deleting "另立" where it twice appears and substituting "定立".</p> <p>(b) In subclause (4), by deleting "former identity" and substituting "original identity".</p>
10	By deleting "former identity" wherever it appears and substituting "original identity".
11(2)	By deleting "intention" and substituting "decision".
12	<p>(a) In subclauses (1) and (3)(a), by deleting "former identity" and substituting "original identity".</p> <p>(b) By adding -</p> <p>"(3A) Where a former participant's original identity is restored and he has outstanding legal rights or obligations or is subject to legal restrictions in respect of the identity that had been provided under the witness protection program ("the new identity"), section 9 applies to such rights, obligations and restrictions, and the approving authority may take the same actions as he could have if they had occurred before the new identity was established."</p>

<u>Clause</u>	<u>Amendment Proposed</u>
13	<p>(a) In subclause (1) -</p> <p>(i) in paragraph (a), by deleting "or";</p> <p>(ii) in paragraph (b), by deleting the comma and substituting "; or";</p> <p>(iii) by adding -</p> <p style="padding-left: 40px;">"(c) not to establish a new identity for him as a participant,";</p> <p>(iv) by deleting "a more senior officer designated by the Commissioner for that purpose" and substituting "the board".</p> <p>(b) In subclause (3), by deleting "officer designated by the Commissioner under subsection (1)" and substituting "board".</p> <p>(c) In subclause (4), by adding "or not to establish a new identity for a participant" after "programme".</p>
14	<p>By deleting the clause and substituting -</p> <p>"14. Establishment of board</p> <p>(1) There is established a board to review decisions of the approving authority referred to in section 13(1)(a), (b) and (c).</p> <p>(2) The board -</p> <p>(a) shall consist of -</p>

ClauseAmendment Proposed

- (i) an officer who is more senior than the approving authority designated by the Commissioner; and
- (ii) 2 persons who are not public officers; and

- (b) may also consist of additional members as determined by the chairman, who may be public officers or not public officers,

and the members referred to in paragraphs (a)(ii) and (b) shall be selected from the panel referred to in subsection (4) in accordance with the procedure provided for in subsection (5).

(3) The officer referred to in subsection (2)(a)(i) shall be the chairman of the board.

(4) The Chief Executive shall, for the purposes of subsection (2)(a)(ii) and (b), appoint a panel of persons consisting of such number of public officers and other persons as he thinks fit.

(5) Members of the panel who are not public officers shall be selected to serve on the board in rotation in accordance with the alphabetical order of their surnames. The chairman may, in addition to such members, select members of the panel who are public officers, in such manner as he sees fit, to serve on the board.

(6) An appointment made under subsection (4) shall be notified in the Gazette.

Clause

Amendment Proposed

(7) The board shall review the documents submitted to it under section 13(3) and shall advise the approving authority and the person who requested the review of its decision to confirm or reverse the decision being reviewed.

(8) Where the approving authority's decision is reversed, he shall amend his decision accordingly.

(9) The board may establish its own procedure for reviewing a decision."

15(b) By adding "in or outside Hong Kong" after "agency".

17 By adding -

"(5A) No proceedings shall be instituted for an offence under subsection (1)(b) except with the consent of the Secretary for Justice."

19 (a) In subclause (1), by deleting everything before paragraph (a) and substituting -

"(1) Where a participant is to give evidence for the HKSAR in legal proceedings, the judge or magistrate in charge of such proceedings may, upon an ex parte application by the prosecution, authorize a police officer or an officer of the Independent Commission Against Corruption to require all members of the public wishing to enter the courtroom to -".

ClauseAmendment Proposed

(b) By adding -

"(1A) An application under subsection (1)
shall be heard in chambers."

(c) In subsection (2), by adding ", subject to any direction of the judge or magistrate," after "may".

附件 XXII

《1999 年危險藥物、總督特派廉政專員公署及
警隊（修訂）條例草案》

全體委員會審議階段

由保安局局長動議的修正案

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- 2 (a) 在建議的第 54AA 條中 —
- (i) 在第(2)款中 —
- (A) 在(a)段中，刪去“牽涉於”而代以“已犯”；
- (B) 在(b)段中，刪去“牽涉於”而代以“已犯”；
- (ii) 刪去第(3)款而代以 —
- “ (3) 依據第(2)款作出的授權
必須以書面形式作出。 ” ；
- (iii) 在第(4)款中 —
- (A) 在(a)段中，刪去“牽涉”而代以
“犯”；
- (B) 在(b)段中，刪去“牽涉於”而代以“已
犯”；
- (C) 刪去(f)段而代以 —

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“(f) 他可向一名警務人員或海關人員提出請求，以取覽從該樣本所得出的資料。”；

(iv) 加入 —

“(4A) 依據第(1)款取得的尿液樣本所屬的人，有權取覽從該樣本所得出的資料。”；

(v) 在第(8)款中，在“嚴重的可逮捕罪行”的定義中，刪去“5”而代以“7”。

(b) 在建議的第 54AB 條中 —

(i) 刪去第(1)款而代以 —

“(1) 在不影響第(3A)款的原則下，除在調查關乎危險藥物的罪行的過程中為作法證科學化驗而取覽、處置或使用依據第 54AA 條取得的尿液樣本外，任何人不得取覽、處置或使用該等樣本。”；

(ii) 刪去第(2)款而代以 —

“(2) 在不影響第(3A)款的原則下，除為以下目的外，任何人不得取覽、披露或使用對依據第 54AA 條取得的尿液樣本作法證科學化驗所得出的資料 —

(a) 在就關乎危險藥物的罪行而進行的法律程序中取覽、披露或使用；或

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- (b) 提供該資料予該資料所關乎的人取覽。”；

(iii) 加入 —

“(3A) 不論依據第 54AA 條取得的尿液樣本或對該樣本作法證科學化驗所得出的資料是否已根據第(4)款毀滅，任何人不得在下述情況出現後在就關乎危險藥物的罪行而進行的法律程序中使用該樣本或資料 —

- (a) 已決定不對該樣本所屬的人控以關乎危險藥物的罪行；
- (b) (如該人被控以一項或多於一項關乎危險藥物的罪行)以下三種情況中最早出現者 —
 - (i) 該項或所有該等控罪(視屬何情況而定)被撤銷；
 - (ii) 法庭在該人被裁定犯該項或所有該等罪行(視屬何情況而定)前釋放該人；或

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- (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等罪行的罪名（視屬何情況而定）不成立。”；
- (iv) 在英文文本第(4)(i)(A)款中，在末處加入“or”；
- (v) 刪去第(6)款而代以 —
 - “(6) 在不影響第(4)及(5)款的實施的原則下，如 —
 - (a) 依據第 54AA 條取得的尿液樣本所屬的人被裁定犯一項或多於一項關乎危險藥物的罪行；而且
 - (b) 並沒有符合以下說明的控罪針對該人 —
 - (i) 關乎危險藥物的罪行的；及
 - (ii) 令保留該樣本屬必要的，

則警務處處長或海關關長(視情況所需而定)須採取合理步驟確保在該項定罪

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所引起的所有法律程序（包括任何上訴）完結後，於切實可行範圍內盡快將由他保留或代他而保留的上述樣本毀滅。”。

- (c) 在建議的第 54AC 條中，在“附表 7”之後加入“，但該等命令須經立法會批准”。

3 在建議的附表 7 中 —

(a) 在第 3(a)(ii)條中 —

(i) 在(A)分節中，刪去“牽涉於”而代以“已犯”；

(ii) 在(B)分節中，刪去“牽涉於”而代以“已犯”；

- (b) 在第 4 條中，刪去“3 天”而代以“裁判官所指示的某段期間”；

(c) 在第 6(a)(ii)條中 —

(i) 在(A)分節中，刪去“牽涉於”而代以“已犯”；

(ii) 在(B)分節中，刪去“牽涉於”而代以“已犯”；

(d) 在表格 1 的(a)段中 —

(i) 在第(i)節中，刪去“牽涉於”而代以“已犯”；

(ii) 在第(ii)節中，刪去“牽涉於”而代以“已犯”；

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- (e) 在表格 2 的(b)段中 —
- (i) 在第(i)節中，刪去“牽涉於”而代以“已犯”；
 - (ii) 在第(ii)節中，刪去“牽涉於”而代以“已犯”；
- 4 (a) 在建議的第 10E 條中 —
- (i) 在第(2)款中 —
 - (A) 在(a)段中，刪去“牽涉於”而代以“已犯”；
 - (B) 在(b)段中，刪去“牽涉於”而代以“已犯”；
 - (ii) 刪去第(3)款而代以 —
 - “ (3) 授權人員 —
 - (a) 依據第(2)款作出的授權必須以書面形式作出，但(b)段另有規定者除外；
 - (b) 在遵從(a)段的規定並不切實可行的情況下，可以口頭形式作出上述授權，而在此情況下，他必須於切實可行範圍內盡快以書面形式確認該項授權。”；
 - (iii) 在第(4)款中 —

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- (A) 在(a)段中，刪去“牽涉”而代以“犯”；
- (B) 在(b)段中，刪去“牽涉於”而代以“已犯”；
- (C) 在(g)段中，刪去“職級在高級廉政主任或以上的”；
- (iv) 加入 —
- “(4A) 依據第(1)款取得的非體內樣本所屬的人，有權取覽從該樣本的化驗所得出的資料。”；
- (v) 在第(8)款中 —
- (A) 在“體內樣本”的定義中 —
- (I) 刪去(a)段而代以 —
- “(a) 血液、精液或其他組織液、尿液或頭髮以外的毛髮樣本；”；
- (II) 刪去(c)段而代以 —
- “(c) 用拭子從人體的私處或從人體孔口(口腔除外)取得的樣本；”；
- (B) 在“非體內樣本”的定義中 —
- (I) 刪去(a)段而代以 —

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“(a) 頭髮樣本；” ；

(II) 刪去(c)段而代以 —

“(c) 用拭子從人體任何不屬私處的部分或從口腔（但不包括口腔以外的其他人體孔口）取得的樣本；” ；

(III) 刪去(e)段而代以 —

“(e) 人體任何部分的印模，但不包括 —

(i) 私處的印模；

(ii) 面部的印模；
或

(iii) 《警隊條例》
（第 232 章）
第 59(6)條描述的鑑別資料；” ；

(C) 在“嚴重的可逮捕罪行”的定義中，刪去“5”而代以“7”。

(b) 在建議的第 10F 條中 —

(i) 刪去第(1)款而代以 —

“(1) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取

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覽、處置或使用依據第 10E 條取得的非
體內樣本 —

- (a) 在調查令犯者可根據第 10 條被逮捕的罪行的過程中為作法證科學化驗而取覽、處置或使用；或
- (b) 為任何就上述罪行而進行的法律程序的目的而取覽、處置或使用。”；

(ii) 刪去第(2)款而代以 —

“(2) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、披露或使用依據第 10E 條取得的非體內樣本的法證科學化驗結果 —

- (a) (i) 在調查任何令犯者可根據第 10 條被逮捕的罪行的過程中為作法證科學比較及法證科學詮釋而取覽、披露或使用；
- (ii) 為任何就上述罪行而進行的法律程序的目的而取覽、披露或使用；或

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(iii) 提供該結果予該結果所關乎的人取覽；或

(b) (如該結果屬 DNA 法證科學化驗結果) 為《警隊條例》(第 232 章)第 59G(1)及(2)條的目的而取覽、披露或使用。”；

(iii) 加入 —

“(4) 不論依據第 10E 條取得的非體內樣本或該樣本的法證科學化驗結果是否已根據第 10G 條毀滅，任何人不得在下述情況出現後，在就令犯者可根據第 10 條被逮捕的罪行而進行的法律程序中使用該樣本或結果 —

(a) 已決定不對該樣本所屬的人控以令犯者可根據第 10 條被逮捕的罪行；

(b) (如該人被控以一項或多於一項令犯者可根據第 10 條被逮捕的罪行)以下三種情況中最早出現者 —

(i) 該項或所有該等控罪(視屬何情況而定)被撤銷；

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- (ii) 法庭在該人被裁定犯該項或所有該等罪行（視屬何情況而定）前釋放該人；或
- (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等罪行的罪名（視屬何情況而定）不成立。”。

(c) 刪去建議的第 10G(4)條而代以 —

“（4）在不影響第（1）及（2）款的實施的原則下，如 —

- (a) 依據第 10E 條取得的非體內樣本所屬的人被裁定犯一項或多於一項令犯者可根據第 10 條被逮捕的罪行；而且
- (b) 並沒有符合以下說明的控罪針對該人 —
 - (i) 關乎令犯者可根據第 10 條被逮捕的罪行的；及
 - (ii) 令保留該樣本屬必要的，

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則廉政專員須採取合理步驟確保在該項定罪所引起的所有法律程序（包括任何上訴）完結後，於切實可行範圍內盡快將由他保留或代他而保留的上述樣本毀滅。”。

5

(a) 在建議的“體內樣本”的定義中 —

(i) 刪去(a)段而代以 —

“(a) 血液、精液或其他組織液、尿液或頭髮以外的毛髮樣本；”；

(ii) 刪去(c)段而代以 —

“(c) 用拭子從人體的私處或從人體孔口（口腔除外）取得的樣本；”。

(b) 在建議的“非體內樣本”的定義中 —

(i) 刪去(a)段而代以 —

“(a) 頭髮樣本；”；

(ii) 刪去(c)段而代以 —

“(c) 用拭子從人體任何不屬私處的部分或從口腔（但不包括口腔以外的其他人體孔口）取得的樣本；”；

(iii) 刪去(e)段而代以 —

“(e) 人體任何部分印模，但不包括 —

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- (i) 私處的印模；
- (ii) 面部的印模；或
- (iii) 第 59(6)條描述的鑑別資料；”。

(c) 刪去建議的“嚴重的可逮捕罪行”的定義而代以 —

““嚴重的可逮捕罪行”(serious arrestable offence)指

—

- (a) 令犯者可根據或憑藉任何法律被判處的最長監禁刑期是不少於 7 年的罪行；或
- (b) 附表 1A 所指明的其他罪行；”。

新條文

加入—

“5A. 就職宣言

第 26 條現予修訂，在“附表”之後加入“1”。”。

6

(a) 在建議的第 59A 條中 —

(i) 在第(2)款中 —

- (A) 在(a)段中，刪去“牽涉於”而代以“已犯”；
- (B) 在(b)段中，刪去“牽涉於”而代以“已犯”；

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(ii) 刪去第(3)款而代以 —

“ (3) 依據第(2)款作出的授權
必須以書面形式作出。 ” ；

(iii) 在第(4)款中 —

(A) 在(a)段中，刪去“牽涉”而代以
“犯”；

(B) 在(b)段中，刪去“牽涉於”而代以“已
犯”；

(C) 在(e)段中，在“罪行”之後加入“或任
何其他罪行”；

(D) 在(f)段中，刪去“職級在警司或以上
的”；

(iv) 加入 —

“(4A) 依據第(1)款取得的
體內樣本所屬的人，有權取覽從該樣本
的化驗所得出的資料。 ” 。

(b) 在建議的第 59C 條中 —

(i) 在第(1)(a)款中，刪去“裁判官或”；

(ii) 在第(2)款中 —

(A) 在(a)段中，刪去“牽涉於”而代以“已
犯”；

(B) 在(b)段中，刪去“牽涉於”而代以“已
犯”；

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(iii) 刪去第(3)款而代以 —

“(3) 授權人員 —

(a) 依據第(2)款作出的授權
必須以書面形式作出，但
(b)段另有規定者除外；

(b) 在遵從(a)段的規定並不切
實可行的情況下，可以口
頭形式作出上述授權，而
在此情況下，他必須於切
實可行範圍內盡快以書面
形式確認該項授權。”；

(iv) 在第(4)款中 —

(A) 在(a)段中，刪去“牽涉”而代以
“犯”；

(B) 在(b)段中，刪去“牽涉於”而代以“已
犯”；

(C) 在(g)段中，刪去“職級在警司或以上的”
；

(v) 加入 —

“(4A) 依據第(1)款取得的
非體內樣本所屬的人，有權取覽從該樣
本的化驗所得出的資料。”。

(c) 在建議的第 59D 條中 —

(i) 刪去第(1)款而代以 —

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“(1) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、處置或使用依據第 59A 或 59C 條取得的體內樣本或非體內樣本 —

(a) 在調查任何罪行的過程中為作法證科學化驗而取覽、處置或使用；或

(b) 為任何就上述罪行而進行的法律程序的目的而取覽、處置或使用。”；

(ii) 刪去第(2)款而代以 —

“(2) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、披露或使用依據第 59A 或 59C 條取得的體內樣本或非體內樣本的法證科學化驗結果 —

(a) (i) 在調查任何罪行的過程中，為作法證科學比較及法證科學詮釋而取覽、披露或使用；

(ii) 為任何就上述罪行而進行的法律程序的目的而取覽、披露或使用；或

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(iii) 提供該結果予
該結果所關乎
的人取覽；或

(b) (如該結果屬 DNA
法證科學化驗結果)
為第 59G(1)及(2)條
的目的取覽、披露或
使用。”；

(iii) 加入 —

“(4) 不論依據第 59A 或 59C
條取得的體內樣本或非體內樣本或上
述樣本的法證科學化驗結果是否已根
據第 59H 條毀滅，任何人不得在以下情
況出現後在任何法律程序中使用該樣
本或結果 —

(a) 已決定不對該樣本
所屬的人控以任何
罪行；

(b) (如該人被控以一項
或多於一項罪行)以
下三種情況中最早
出現者 —

(i) 該項或所有該
等控罪(視屬
何情況而定)
被撤銷；

(ii) 法庭在該人被
裁定犯該項或
所有該等罪行

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(視屬何情況而定) 前釋放該人；或

- (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等罪行的罪名（視屬何情況而定）不成立。

(5) 不論依據第 59F 條取得的非體內樣本或從該樣本得出的 DNA 資料是否已根據第 59H(7) 條毀滅，任何人不得於警務處處長接獲根據第 59F(5) 條送達的通知書後，在任何法律程序中使用該樣本或資料。”。

(d) 在建議的第 59E 條中 —

- (i) 在第 (2)(d) 款中，刪去“職級在警司或以上的”；
- (ii) 加入 —

“(5) 凡依據第 (1) 款從某人的口腔用拭子取得非體內樣本，該人有權取覽從該樣本所得出的 DNA 資料。

(6) 從某人的口腔用拭子收取非體內樣本，只可於該人被裁定犯任何嚴重的可逮捕罪行後的 12 個月內收取。”。

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(e) 在建議的第 59F 條中，加入—

“(3A) 凡有授權依據第(1)款作出，則任何警務人員在向有關的人收取非體內樣本前，須將以下各事宜告知該人 —

- (a) 從該樣本得出的 DNA 資料可儲存於根據第 59G 條第(1)款保存的 DNA 資料庫，並且可用於該條第(2)款指明的用途；
- (b) 他可向一名警務人員提出請求，以取覽該資料；及
- (c) 他可隨時撤銷他為第(1)(b)及(c)款提述的目的所作出的授權。”。

(f) 在建議的第 59G(2)條中 —

(i) 在第(iii)段中，刪去 “或” ；

(ii) 刪去第(iv)段而代以 —

“(iv) 為施行以下條文或為與其相關的目的而管理 DNA 資料庫 —

(A) 第(i)、(ii)或(iii)段或第(1)款；

(B) 第 59H 條；或

(v) 根據《死因裁判官條例》(第 504 章)就任何死亡個案進行調查或研訊。”。

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- (g) 在建議的第 59H 條中 —
- (i) 在英文文本第 (1)(i)(A) 款中，在末處加入
“or” ；
- (ii) 刪去第 (4) 款而代以 —

“ (4) 在不影響第 (1) 及 (2) 款的
實施的原則下，如 —

- (a) 依據第 59A 或 59C 條
取得的體內樣本或
非體內樣本所屬的
人被裁定犯一項或
多於一項罪行；而且
- (b) 並沒有關乎任何罪
行且令保留該樣本
屬必要的控罪針對
該人，

則警務處處長須採取合理步驟確保在
該項定罪所引起的所有法律程序(包括
任何上訴)完結後，於切實可行範圍內
盡快將由他保留或代他而保留的上述
樣本毀滅。”。

- (h) 刪去建議的第 59I 條而代以 —

“59I. 修訂附表 1A 及 2

行政長官會同行政會議可藉於憲報刊
登的命令修訂附表 1A 或 2，但該等命令須經立法
會批准。”。

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新條文 加入 —

“7A. 加入附表 1A

現加入 —

“附表1A [第3及59I條]

指明為嚴重的可逮捕罪行的罪行

罪行

述要*

《刑事罪行條例》
(第200章)

第24條

刑事恐嚇

第25條

襲擊他人意圖導致作出或
不作出某些作為

第118F條

非私下作出的同性肛交

第120條

以虛假藉口促致他人作非
法的性行為

第124條

與年齡在16歲以下的女童
性交

第132條

促致年齡在21歲以下的女
童與人非法性交

*備註： 本附表中各罪行的述要僅供參考
用。”。

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- 8 在建議的附表2中 —
- (a) 在第 3(a)(ii)條中 —
 - (i) 在(A)分節中，刪去“牽涉於”而代以“已犯”；
 - (ii) 在(B)分節中，刪去“牽涉於”而代以“已犯”；
 - (b) 第 4 條中，刪去“3 天”而代以“裁判官所指示的某段期間”；
 - (c) 在第 6(a)(ii)條中 —
 - (i) 在(A)分節中，刪去“牽涉於”而代以“已犯”；
 - (ii) 在(B)分節中，刪去“牽涉於”而代以“已犯”；
 - (d) 在表格 1 的(a)段中 —
 - (i) 在第(i)節中，刪去“牽涉於”而代以“已犯”；
 - (ii) 在第(ii)節中，刪去“牽涉於”而代以“已犯”；
 - (e) 在表格 2 的(b)段中 —
 - (i) 在第(i)節中，刪去“牽涉於”而代以“已犯”；
 - (ii) 在第(ii)節中，刪去“牽涉於”而代以“已犯”；

《1999 年危險藥物、總督特派廉政專員公署及
警隊（修訂）條例草案》

全體委員會審議階段

由涂謹申議員動議的修正案

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- 2 (a) 在建議的第 54AA(4)(e)條中，刪去“關乎危險藥物的罪行”而代以“嚴重的可逮捕罪行”。
- (b) 在建議的第 54AB 條中 —
- (i) 刪去第(1)款而代以 —
- “（1）在不影響第(3A)款的原則下，除在調查關乎嚴重的可逮捕罪行的過程中為作法證科學化驗而取覽、處置或使用依據第 54AA 條取得的尿液樣本外，任何人不得取覽、處置或使用該等樣本。”；
- (ii) 刪去第(2)款而代以 —
- “（2）在不影響第(3A)款的原則下，除為以下目的外，任何人不得取覽、披露或使用對依據第 54AA 條取得的尿液樣本作法證科學化驗所得出的資料 —
- (a) 在就關乎嚴重的可逮捕罪行而進行的法律程序中取覽、披露或使用；或

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- (b) 提供該資料予該資料所關乎的人取覽。”；

(iii) 加入 —

“(3A) 不論依據第 54AA 條取得的尿液樣本或對該樣本作法證科學化驗所得出的資料是否已根據第(4)款毀滅，任何人不得在下述情況出現後在就嚴重的可逮捕罪行而進行的法律程序中使用該樣本或資料 —

- (a) 已決定不對該樣本所屬的人控以嚴重的可逮捕罪行；
- (b) (如該人被控以一項或多於一項嚴重的可逮捕罪行)以下三種情況中最早出現者 —
 - (i) 該項或所有該等控罪(視屬何情況而定)被撤銷；
 - (ii) 法庭在該人被裁定犯該項或所有該等罪行(視屬何情況而定)前釋放該人；或

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- (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等罪行的罪名（視屬何情況而定）不成立。”；
- (iv) 在第(4)款中 —
 - (A) 在第(i)段中，刪去“關乎危險藥物的罪行”而代以“嚴重的可逮捕罪行”；
 - (B) 在第(ii)段中，刪去“關乎危險藥物的罪行”而代以“嚴重的可逮捕罪行”；
- (v) 刪去第(6)款而代以 —
 - “(6) 在不影響第(4)及(5)款的實施原則下，如 —
 - (a) 依據第 54AA 條取得的尿液樣本所屬的人被裁定犯一項或多於一項關乎危險藥物的罪行；而且
 - (b) 並沒有符合以下說明的控罪針對該人 —
 - (i) 關乎嚴重的可逮捕罪行的；
 - 及

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- (ii) 令保留樣本屬必要的，

則警務處處長或海關關長(視情況所需而定)須採取合理步驟確保在該項定罪所引起的所有法律程序(包括任何上訴)完結後,於切實可行範圍內盡快將由他保留或代他而保留的上述樣本毀滅。”。

- 4 (a) 在建議的第 10E(4)(f)條中,刪去“的罪行”而代以“的嚴重的可逮捕罪行”。

- (b) 在建議的第 10F 條中 —

- (i) 刪去第(1)款而代以 —

“(1) 在不影響第(4)款的原則下,除為以下目的外,任何人不得取覽、處置或使用依據第 10E 條取得的非體內樣本 —

- (a) 在調查嚴重的可逮捕罪行的過程中為作法證科學化驗而取覽、處置或使用；或

- (b) 為任何就上述罪行而進行的法律程序的目的而取覽、處置或使用。”；

- (ii) 刪去第(2)款而代以 —

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“(2) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、披露或使用依據第 10E 條取得的非體內樣本的法證科學化驗結果 —

- (a) (i) 在調查任何嚴重的可逮捕罪行的過程中為作法證科學比較及法證科學詮釋而取覽、披露或使用；
- (ii) 為任何就上述罪行而進行的法律程序的目的而取覽、披露或使用；或
- (iii) 提供該結果予該結果所關乎的人取覽；或
- (b) (如該結果屬 DNA 法證科學化驗結果) 為《警隊條例》(第 232 章)第 59G(1)及(2)條的目的而取覽、披露或使用。”；

(iii) 加入 —

“(4) 不論依據第 10E 條取得的非體內樣本或該樣本的法證科學化驗結果是否已根據第 10G 條毀滅，任何

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人不得在下述情況出現後，在就嚴重的可逮捕罪行而進行的法律程序中使用該樣本或結果 —

- (a) 已決定不對該樣本所屬的人控以嚴重的可逮捕罪行；
- (b) (如該人被控以一項或多於一項嚴重的可逮捕罪行)以下三種情況中最早出現者 —
 - (i) 該項或所有該等控罪(視屬何情況而定)被撤銷；
 - (ii) 法庭在該人被裁定犯該項或所有該等罪行(視屬何情況而定)前釋放該人；或
 - (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等罪行的罪名(視屬何情況而定)不成立。”；

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(iv) 加入 —

“ (5) 本條對 “國家” 具約束力。 ” 。

(c) 在建議的第 10G 條中 —

(i) 在第(1)款中 —

(A) 在第(i)段中，刪去 “罪行” 而代以 “嚴重的可逮捕罪行” ；

(B) 在第(ii)段中，刪去 “的罪行” 而代以 “的嚴重的可逮捕罪行” ；

(ii) 刪去第(4)款而代以 —

“ (4) 在不影響第(1)及(2)款的實施的原則下，如 —

(a) 依據第 10E 條取得的非體內樣本所屬的人被裁定犯一項或多於一項令犯者可根據第 10 條被逮捕的罪行；而且

(b) 並沒有符合以下說明的控罪針對該人 —

(i) 關乎嚴重的可逮捕罪行的；
及

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- (ii) 令保留該樣本屬必要的，

則廉政專員須採取合理步驟確保在該項定罪所引起的所有法律程序(包括任何上訴)完結後，於切實可行範圍內盡快將由他保留或代他而保留的上述樣本毀滅。”。

- 6 (a) 在建議的第 59A(4)(e)條中，在“罪行”之後加入“或任何其他嚴重的可逮捕罪行”。
- (b) 在建議的第 59C(4)(f)條中，刪去“其他罪行”而代以“其他嚴重的可逮捕罪行”。
- (c) 在建議的第 59D 條中 —
- (i) 刪去第(1)款而代以 —

“(1) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、處置或使用依據第 59A 或 59C 條取得的體內樣本或非體內樣本 —

- (a) 在調查任何嚴重的可逮捕罪行的過程中為作法證科學化驗而取覽、處置或使用；或
- (b) 為任何就上述罪行而進行的法律程序的目的而取覽、處置或使用。”；

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建議修正案

(ii) 刪去第(2)款而代以 —

“(2) 在不影響第(4)款的原則下，除為以下目的外，任何人不得取覽、披露或使用依據第 59A 或 59C 條取得的體內樣本或非體內樣本的法證科學化驗結果 —

- (a) (i) 在調查任何嚴重的可逮捕罪行的過程中，為作法證科學比較及法證科學詮釋而取覽、披露或使用；
- (ii) 為任何就上述罪行而進行的法律程序的目的而取覽、披露或使用；或
- (iii) 提供該結果予該結果所關乎的人取覽；或
- (b) (如該結果屬 DNA 法證科學化驗結果) 為第 59G(1) 及 (2) 條的目的而取覽、披露或使用。”；

條次建議修正案

(iii) 加入 —

“(4) 不論依據第 59A 或 59C 條取得的體內樣本或非體內樣本或上述樣本的法證科學化驗結果是否已根據第 59H 條毀滅，任何人不得在以下情況出現後在任何法律程序中使用該樣本或結果 —

- (a) 已決定不對該樣本所屬的人控以任何嚴重的可逮捕罪行；
- (b) (如該人被控以一項或多於一項嚴重的可逮捕罪行)以下三種情況中最早出現者 —
 - (i) 該項或所有該等控罪(視屬何情況而定)被撤銷；
 - (ii) 法庭在該人被裁定犯該項或所有該等罪行(視屬何情況而定)前釋放該人；或
 - (iii) 在審訊或上訴時，法庭裁定該人被控的該項或所有該等

條次

建議修正案

罪行的罪名
（視屬何情況
而定）不成
立。

(5) 不論依據第 59F 條取得的非體內樣本或從該樣本得出的 DNA 資料是否已根據第 59H(7)條毀滅，任何人不得於警務處處長接獲根據第 59F(5)條送達的通知書後，在任何法律程序中使用該樣本或資料。”；

(iv) 加入 —

“(6) 本條對“國家”具約束力。”。

(d) 在建議的第 59G 條中 —

(i) 在第(2)(i)款中，刪去“任何罪行”而代以“任何嚴重的可逮捕罪行”；

(ii) 加入 —

“(4) 本條對“國家”具約束力。”。

(e) 在建議的第 59H 條中 —

(i) 在第(1)款中 —

(A) 在第(i)段中，刪去“任何罪行”而代以“任何嚴重的可逮捕罪行”；

(B) 在第(ii)段中，刪去“一項罪行的”而代以“一項嚴重的可逮捕罪行的”；

條次建議修正案

(ii) 刪去第(4)款而代以 —

“(4) 在不影響第(1)及(2)款的實施的原則下，如 —

- (a) 依據第 59A 或 59C 條取得的體內樣本或非體內樣本所屬的人被裁定犯一項或多於一項罪行；而且
- (b) 並沒有任何關乎嚴重的可逮捕罪行且令保留該樣本屬必要的控罪針對該人，

則警務處處長須採取合理步驟確保在該項定罪所引起的所有法律程序(包括任何上訴)完結後，於切實可行範圍內盡快將由他保留或代他而保留的上述樣本毀滅。”。

Annex XXII

**DANGEROUS DRUGS, INDEPENDENT COMMISSION
AGAINST CORRUPTION AND POLICE FORCE
(AMENDMENT) BILL 1999**

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the proposed section 54AA -</p> <p>(i) in subsection (2) -</p> <p>(A) by deleting paragraph (a) and substituting -</p> <p>"(a) for suspecting that the person from whom the urine sample is to be taken has committed a serious arrestable offence; and";</p> <p>(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";</p> <p>(ii) by deleting subsection (3) and substituting -</p> <p>"(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.";</p>

ClauseAmendment Proposed

(iii) in subsection (4) -

(A) in paragraph (a), by deleting "been involved" and substituting "committed";

(B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

(C) by deleting paragraph (f) and substituting -

"(f) that he may make a request to a police officer or a member of the Customs and Excise Service for access to the information derived from the sample.";

(iv) by adding -

"(4A) The person from whom a urine sample was taken pursuant to subsection (1) is entitled to access to the information derived from the sample.";

(v) in subsection (8), in the definition of "serious arrestable offence", by deleting "5" and substituting "7".

(b) In the proposed section 54AB -

(i) in subsection (1), by deleting "No person shall" and substituting "Without prejudice to subsection (3A), no person shall have access to, dispose of or";

Clause

Amendment Proposed

(ii) by deleting subsection (2) and substituting -

"(2) Without prejudice to subsection (3A), no person shall have access to, disclose or use any information derived from the forensic analysis of a urine sample taken pursuant to section 54AA except for the purposes of -

(a) any proceedings for an offence in relation to dangerous drugs; or

(b) making the information available to the person to whom the information relates.";

(iii) by adding -

"(3A) Whether or not a urine sample taken pursuant to section 54AA or any information derived from the forensic analysis of the sample has been destroyed under subsection (4), no person shall use the sample or information in any proceedings for an offence in relation to dangerous drugs after -

(a) it is decided that a person from whom the sample was taken

ClauseAmendment Proposed

shall not be charged with any offence in relation to dangerous drugs;

(b) if the person has been charged with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.";

Clause

Amendment Proposed

(iv) in subsection (4)(i)(A), by adding "or" at the end;

(v) by deleting subsection (6) and substituting -

"(6) Without prejudice to the operation of subsections (4) and (5), if -

(a) a person from whom a urine sample was taken pursuant to section 54AA has been convicted of one or more offences in relation to dangerous drugs; and

(b) there is no other charge against the person -

(i) in relation to dangerous drugs; and

(ii) which renders the retention of the sample necessary,

then the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after

ClauseAmendment Proposed

the conclusion of all proceedings (including any appeal) arising out of the conviction."

- (c) In the proposed section 54AC, by adding "but any order to amend that Schedule shall be subject to the approval of the Legislative Council" after "Schedule".

3

In the proposed Seventh Schedule -

- (a) in section 3(a)(ii) -

- (i) by deleting sub-subparagraph (A) and substituting -

"(A) for suspecting that the person from whom the urine sample is to be taken has committed a serious arrestable offence; and";

- (ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

- (b) in section 4, by deleting "3 days" and substituting "a period as may be directed by the magistrate";

- (c) in section 6(a)(ii) -

- (i) by deleting sub-subparagraph (A) and substituting -

Clause

Amendment Proposed

"(A) for suspecting that the person from whom the urine sample is to be taken has committed a serious arrestable offence; and";

(ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

(d) in Form 1, in paragraph (a) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by";

(e) in Form 2, in paragraph (b) -

(i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";

(ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by".

4

(a) In the proposed section 10E -

(i) in subsection (2) -

ClauseAmendment Proposed

- (A) by deleting paragraph (a) and substituting -
- (a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and";
- (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
- (ii) by deleting subsection (3) and substituting -
- (3) An authorizing officer -
- (a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;
- (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.";
- (iii) in subsection (4) -
- (A) in paragraph (a), by deleting "been involved" and substituting "committed";
- (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";

Clause

Amendment Proposed

(C) by deleting paragraph (g) and substituting -

"(g) that he may make a request to an officer for access to the information derived from the analysis of the sample; and";

(iv) by adding -

"(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample.";

(v) in subsection (8) -

(A) in the definition of "intimate sample" -

(I) by deleting paragraph (a) and substituting -

"(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;"

(II) by deleting paragraph (c) and substituting -

"(c) a swab taken from a private part of a person's body or

ClauseAmendment Proposed

from a person's body orifice other than the mouth;"

(B) in the definition of "non-intimate sample" -

(I) by deleting paragraph (a) and substituting -

"(a) a sample of head hair;"

(II) by deleting paragraph (c) and substituting -

"(c) a swab taken from any part, other than a private part, of a person's body or from the mouth but not any other body orifice;"

(III) by deleting paragraph (e) and substituting -

"(e) an impression of any part of a person's body other than -

(i) an impression of a private part;

Clause

Amendment Proposed

(ii) an impression of the face; or

(iii) the identifying particulars described in section 59(6) of the Police Force Ordinance (Cap. 232);";

(C) in the definition of "serious arrestable offence", by deleting "5" and substituting "7".

(b) In the proposed section 10F -

(i) in subsection (1), by deleting "No person shall" and substituting "Without prejudice to subsection (4), no person shall have access to, dispose of or";

(ii) by deleting subsection (2) and substituting -

"(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of a non-intimate sample taken pursuant to section 10E except -

(a) for the purposes of -

(i) forensic comparison

ClauseAmendment Proposed

and
interpretation
in the course of
investigation of
any offence for
which a person
may be
arrested under
section 10;

(ii) any
proceedings
for such an
offence; or

(iii) making the
results
available to the
person to
whom the
results relate;
or

(b) for the purposes of
section 59G(1) and
(2) of the Police
Force Ordinance
(Cap. 232) where the
results are of forensic
DNA analysis.";

(iii) by adding -

"(4) Whether or not a non-
intimate sample taken pursuant to section
10E or the results of forensic analysis of

Clause

Amendment Proposed

the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for an offence for which a person may be arrested under section 10 after -

- (a) it is decided that a person from whom the sample was taken shall not be charged with any offence for which a person may be arrested under section 10;
- (b) if the person has been charged with one or more such offences -
 - (i) the charge or all the charges, as the case may be, is or are withdrawn;
 - (ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

ClauseAmendment Proposed

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first."

(c) By deleting the proposed section 10G(4) and substituting -

"(4) Without prejudice to the operation of subsections (1) and (2), if -

(a) a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or more offences for which a person may be arrested under section 10; and

(b) there is no other charge against the person -

(i) in relation to an offence which a person may be arrested under section 10; and

(ii) which renders the retention of the sample necessary,

Clause

Amendment Proposed

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

- 5 (a) In the proposed definition of "intimate sample" -
- (i) by deleting paragraph (a) and substituting -
 - "(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;"
 - (ii) by deleting paragraph (c) and substituting -
 - "(c) a swab taken from a private part of a person's body or from a person's body orifice other than the mouth;"
- (b) In the proposed definition of "non-intimate sample" -
- (i) by deleting paragraph (a) and substituting -
 - "(a) a sample of head hair;"
 - (ii) by deleting paragraph (c) and substituting -
 - "(c) a swab taken from any part, other than a private part, of a person's body or from the mouth but not any other body orifice;"

ClauseAmendment Proposed

(iii) by deleting paragraph (e) and substituting -

"(e) an impression of any part of a person's body other than -

(i) an impression of a private part;

(ii) an impression of the face; or

(iii) the identifying particulars described in section 59(6);".

(c) By deleting the proposed definition of "serious arrestable offence" and substituting -

"serious arrestable offence" (嚴重的可逮捕罪行) means -

(a) an offence for which a person may under or by virtue of any law be sentenced to imprisonment for a term not less than 7 years; or

(b) any other offence specified in Schedule 1A."

New

By adding -

"5A. Declaration of office

Section 26 is amended by repealing "the Schedule" and substituting "Schedule 1".

Clause

Amendment Proposed

- 6 (a) In the proposed section 59A -
- (i) in subsection (2) -
- (A) by deleting paragraph (a) and substituting -
- "(a) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and";
- (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
- (ii) by deleting subsection (3) and substituting -
- "(3) An authorizing officer must give an authorization pursuant to subsection (2) in writing.";
- (iii) in subsection (4) -
- (A) in paragraph (a), by deleting "been involved" and substituting "committed";
- (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
- (C) in paragraph (e), by adding "或任何其他罪行" after "罪行";

ClauseAmendment Proposed

(D) by deleting paragraph (f) and substituting -

"(f) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and";

(iv) by adding -

"(4A) The person from whom an intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample."

(b) In the proposed section 59C -

(i) in subsection (1)(a), by deleting "magistrate or";

(ii) in subsection (2) -

(A) by deleting paragraph (a) and substituting -

"(a) for suspecting that the person from whom the non-intimate sample is to be taken has committed a serious arrestable offence; and";

Clause

Amendment Proposed

- (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
- (iii) by deleting subsection (3) and substituting -
 - "(3) An authorizing officer -
 - (a) subject to paragraph (b), must give an authorization pursuant to subsection (2) in writing;
 - (b) where it is impracticable to comply with paragraph (a), may give such authorization orally, in which case he must confirm it in writing as soon as practicable.";
- (iv) in subsection (4) -
 - (A) in paragraph (a), by deleting "been involved" and substituting "committed";
 - (B) in paragraph (b), by deleting "involvement of" and substituting "commission of the offence by";
 - (C) by deleting paragraph (g) and substituting -
 - "(g) that he may make a request to a police officer for access to the information derived from the analysis of the sample; and";

ClauseAmendment Proposed

(v) by adding -

"(4A) The person from whom a non-intimate sample was taken pursuant to subsection (1) is entitled to access to the information derived from the analysis of the sample."

(c) In the proposed section 59D -

(i) in subsection (1), by deleting "No person shall" and substituting "Without prejudice to subsection (4), no person shall have access to, dispose of or";

(ii) by deleting subsection (2) and substituting -

"(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except -

(a) for the purposes of -

(i) forensic comparison and interpretation in the course of investigation of any offence;

Clause

Amendment Proposed

- (ii) any proceedings for such an offence; or
 - (iii) making the results available to the person to whom the results relate; or
- (b) for the purposes of section 59G(1) and (2) where the results are of forensic DNA analysis.";
- (iii) by adding -
 - "(4) Whether or not an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C or the results of forensic analysis of the sample has been destroyed under section 59H, no person shall use the sample or results in any proceedings after -
 - (a) it is decided that a person from whom the sample was taken shall not be charged with any offence;

ClauseAmendment Proposed

(b) if the person has been charged with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.

(5) Whether or not a non-intimate sample taken pursuant to section 59F or DNA information derived from the sample has been destroyed under section 59H(7), no person shall use the

Clause

Amendment Proposed

sample or information in any proceedings after the Commissioner receives a notice served under section 59F(5).".

(d) In the proposed section 59E -

(i) by deleting subsection (2)(d) and substituting -

"(d) that the person may make a request to a police officer for access to the DNA information derived from the sample.";

(ii) by adding -

"(5) The person from whom a non-intimate sample of a swab from the mouth was taken pursuant to subsection (1) is entitled to access to the DNA information derived from the sample.

(6) A non-intimate sample of a swab from the mouth of a person may only be taken within 12 months after the person has been convicted of a serious arrestable offence.".

(e) In the proposed section 59F, by adding -

"(3A) Where an authorization has been given pursuant to subsection (1), a police officer shall, before the taking of a non-intimate sample, inform the person from whom the sample is to be taken -

ClauseAmendment Proposed

- (a) the DNA information derived from the sample may be stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section;
 - (b) that he may make a request to a police officer for access to the information; and
 - (c) that he may at any time withdraw his authorization given for the purposes referred to in subsection (1)(b) and (c).".
- (f) In the proposed section 59G(2) -
- (i) in paragraph (iii), by deleting "or";
 - (ii) by deleting paragraph (iv) and substituting -
 - "(iv) administering the DNA database for the purposes of or connected with any of the following -
 - (A) paragraph (i), (ii) or (iii) or subsection (1);
 - (B) section 59H; or
 - (v) any investigation or inquest into the death of a person under the Coroners Ordinance (Cap. 504).".

Clause

Amendment Proposed

- (g) In the proposed section 59H -
- (i) in subsection (1)(i)(A), by adding "or" at the end;
 - (ii) by deleting subsection (4) and substituting -

"(4) Without prejudice to the operation of subsections (1) and (2), if -

- (a) a person from whom an intimate sample or a non-intimate sample was taken pursuant to section 59A or 59C has been convicted of one or more offences; and
- (b) there is no other charge against the person in relation to an offence which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

ClauseAmendment Proposed

(h) By deleting the proposed section 59I and substituting -

"59I. Amendment of Schedules 1A and 2

The Chief Executive in Council may by order published in the Gazette amend Schedule 1A or 2 but any order to amend any Schedule shall be subject to the approval of the Legislative Council."

New

By adding -

"7A. Schedule 1A added

The following is added -

"SCHEDULE 1A [ss. 3 & 59I]

OFFENCES SPECIFIED AS SERIOUS
ARRESTABLE OFFENCES

Offence	Descriptions*
Crimes Ordinance (Cap. 200)	
section 24	criminal intimidation
section 25	assaults with intent to cause certain acts to be done or omitted
section 118F	homosexual buggery committed otherwise than in private

Clause

Amendment Proposed

section 120 procurement by false pretences

section 124 intercourse with girl under 16

section 132 procurement of girl under 21

*Note: The short description of offences in this Schedule is for ease of reference only."."

8 In the proposed Schedule 2 -

(a) in section 3(a)(ii) -

(i) by deleting sub-subparagraph (A) and substituting -

"(A) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and";

(ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";

(b) in section 4, by deleting "3 days" and substituting "a period as may be directed by the magistrate";

(c) in section 6(a)(ii) -

(i) by deleting sub-subparagraph (A) and substituting -

ClauseAmendment Proposed

- "(A) for suspecting that the person from whom the intimate sample is to be taken has committed a serious arrestable offence; and";
- (ii) in sub-subparagraph (B), by deleting "involvement of" and substituting "commission of the offence by";
- (d) in Form 1, in paragraph (a) -
- (i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";
- (ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by";
- (e) in Form 2, in paragraph (b) -
- (i) in subparagraph (i), by deleting "the involvement of the said person in" and substituting "that the said person has committed";
- (ii) in subparagraph (ii), by deleting "involvement of" and substituting "commission of the offence by".

DANGEROUS DRUGS, INDEPENDENT COMMISSION
AGAINST CORRUPTION AND POLICE FORCE
(AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

Clause

Amendment Proposed

- 2
- (a) In the proposed section 54AA(4)(e), by deleting "offence in relation to dangerous drugs" and substituting "serious arrestable offence".
- (b) In the proposed section 54AB -
- (i) by deleting subsection (1) and substituting -
- "(1) Without prejudice to subsection (3A), no person shall have access to, dispose of or use a urine sample taken pursuant to section 54AA except for the purposes of forensic analysis in the course of an investigation of any serious arrestable offence.";
- (ii) by deleting subsection (2) and substituting -
- "(2) Without prejudice to subsection (3A), no person shall have access to, disclose or use any information derived from the forensic analysis of a urine sample taken pursuant to section 54AA except for the purposes of -

ClauseAmendment Proposed

- (a) any proceedings for a serious arrestable offence; or
 - (b) making the information available to the person to whom the information relates.";
- (iii) by adding -
- "(3A) Whether or not a urine sample taken pursuant to section 54AA or any information derived from the forensic analysis of the sample has been destroyed under subsection (4), no person shall use the sample or information in any proceedings for a serious arrestable offence after -
- (a) it is decided that a person from whom the sample was taken shall not be charged with any serious arrestable offence;
 - (b) if the person has been charged with one or more such offences -
 - (i) the charge or all the charges, as the case may be, is or are withdrawn;

Clause

Amendment Proposed

- (ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
 - (iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.";

- (iv) in subsection (4) -
 - (A) in paragraph (i), by deleting "offence in relation to dangerous drugs" and substituting "serious arrestable offence";
 - (B) in paragraph (ii), by deleting "offences in relation to dangerous drugs" and substituting "serious arrestable offences";

ClauseAmendment Proposed

(v) by deleting subsection (6) and substituting -

"(6) Without prejudice to the operation of subsections (4) and (5), if -

(a) a person from whom a urine sample was taken pursuant to section 54AA has been convicted of one or more offences in relation to dangerous drugs; and

(b) there is no other charge against the person -

(i) in relation to serious arrestable offences; and

(ii) which renders the retention of the sample necessary,

then the Commissioner of Police or the Commissioner of Customs and Excise, as the case may be, shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

Clause

Amendment Proposed

- 4
- (a) In the proposed section 10E(4)(f), by deleting "offence for which a person may be arrested under section 10" and substituting "serious arrestable offence".
 - (b) In the proposed section 10F -
 - (i) by deleting subsection (1) and by substituting -

"(1) Without prejudice to subsection (4), no person shall have access to, dispose of or use a non-intimate sample taken pursuant to section 10E except for the purposes of -

 - (a) forensic analysis in the course of an investigation of any serious arrestable offence; or
 - (b) any proceedings for any such offence.";
 - (ii) by deleting subsection (2) and substituting -

"(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of a non-intimate sample taken pursuant to section 10E except -

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- (a) for the purposes of -
 - (i) forensic comparison and interpretation in the course of investigation of any serious arrestable offence;
 - (ii) any proceedings for such an offence; or
 - (iii) making the results available to the person to whom the results relate; or
 - (b) for the purposes of section 59G(1) and (2) of the Police Force Ordinance (Cap. 232) where the results are of forensic DNA analysis. ";
- (iii) by adding -

"(4) Whether or not a non-intimate sample taken pursuant to section 10E or the results of forensic analysis of

Clause

Amendment Proposed

the sample has been destroyed under section 10G, no person shall use the sample or results in any proceedings for a serious arrestable offence after -

- (a) it is decided that a person from whom the sample was taken shall not be charged with any serious arrestable offence;
- (b) if the person has been charged with one or more such offences -
 - (i) the charge or all the charges, as the case may be, is or are withdrawn;
 - (ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or
 - (iii) the person is acquitted of the offence or all the offences, as

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the case may
be, at trial or
on appeal,

whichever occurs
first.";

(iv) by adding -

"(5) This section shall be
binding on the State.".

(c) In the proposed section 10G -

(i) in subsection (1) -

(A) in paragraph (i), by deleting "offence for which a person may be arrested under section 10" and substituting "serious arrestable offence";

(B) in paragraph (ii), by deleting "offences for which a person may be arrested under section 10" and substituting "serious arrestable offences";

(ii) by deleting subsection (4) and substituting -

"(4) Without prejudice to the
operation of subsections (1) and (2), if -

(a) a person from whom a non-intimate sample was taken pursuant to section 10E has been convicted of one or

Clause

Amendment Proposed

more offences for which a person may be arrested under section 10; and

(b) there is no other charge against the person -

(i) in relation to any serious arrestable offence; and

(ii) which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

- 6
- (a) In the proposed section 59A(4)(e), by deleting "any other offence" and substituting "any other serious arrestable offence".
 - (b) In the proposed section 59C(4)(f), by deleting "any other offence" and substituting "any other serious arrestable offence".

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(c) In the proposed section 59D -

(i) by deleting subsection (1) and substituting -

"(1) Without prejudice to subsection (4), no person shall have access to, dispose of or use an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except for the purposes of -

(a) forensic analysis in the course of an investigation of any serious arrestable offence; or

(b) any proceedings for any such offence.";

(ii) by deleting subsection (2) and substituting -

"(2) Without prejudice to subsection (4), no person shall have access to, disclose or use the results of forensic analysis of an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C except -

(a) for the purposes of -

(i) forensic comparison and interpretation in the course of

Clause

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investigation of any serious arrestable offence;

(ii) any proceedings for such an offence; or

(iii) making the results available to the person to whom the results relate; or

(b) for the purposes of section 59G(1) and (2) where the results are of forensic DNA analysis.";

(iii) by adding -

"(4) Whether or not an intimate sample or a non-intimate sample taken pursuant to section 59A or 59C or the results of forensic analysis of the sample has been destroyed under section 59H, no person shall use the sample or results in any proceedings after -

(a) it is decided that a person from whom

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the sample was taken shall not be charged with any serious arrestable offence;

(b) if the person has been charged with one or more such offences -

(i) the charge or all the charges, as the case may be, is or are withdrawn;

(ii) the person is discharged by a court before conviction of the offence or all the offences, as the case may be; or

(iii) the person is acquitted of the offence or all the offences, as the case may be, at trial or on appeal,

whichever occurs first.

Clause

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(5) Whether or not a non-intimate sample taken pursuant to section 59F or DNA information derived from the sample has been destroyed under section 59H(7), no person shall use the sample or information in any proceedings after the Commissioner receives a notice served under section 59F(5).";

(iv) by adding -

"(6) This section shall be binding on the State.".

(d) In the proposed section 59G -

(i) in subsection (2)(i), by deleting "any offence" and substituting "any serious arrestable offence";

(ii) by adding -

"(4) This section shall be binding on the State.".

(e) In the proposed section 59H -

(i) in subsection (1) -

(A) in paragraph (i), by deleting "any offence" and substituting "any serious arrestable offence";

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- (B) in paragraph (ii), by deleting "one or more offences" and substituting "one or more serious arrestable offences";
- (ii) by deleting subsection (4) and substituting -

"(4) Without prejudice to the operation of subsections (1) and (2), if -

- (a) a person from whom an intimate sample or a non-intimate sample was taken pursuant to section 59A or 59C has been convicted of one or more offences; and
- (b) there is no other charge of serious arrestable offence against the person which renders the retention of the sample necessary,

then the Commissioner shall take reasonable steps to ensure that the sample which may be retained by him or on his behalf is destroyed as soon as practicable after the conclusion of all proceedings (including any appeal) arising out of the conviction."

附件 XXIII

《2000 年建築物管理（修訂）條例草案》

全體委員會審議階段

由民政事務局局長動議的修正案

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- 3 (a) 在(a)段之前加入 —
- “ (aa) 在第(1)款中，在“委任”之前加入 —
- “除根據第(3)款召開的會議外，”；”。
- (b) 在(a)段中，刪去在“中”之後的所有字句而代以 —
- “ —
- (i) 在“根據”之前加入“除第(3)款另有規定外，”；
- (ii) 在(b)段中，廢除“50%”而代以“30%”；”。
- (c) 在(b)段中 —
- (i) 加入 —
- “ (4) 就第(3)款而言 —
- (a) “業主人數 10%”
(10% of the owners)—
詞 —

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- (i) 指業主的人數的 10%，而無須理會他們在建築物的總分割份數中的擁有權的百分率；而
- (ii) 並非指總共擁有達 10%份數的業主；
- (b) 第(1)(c)款不適用於根據第(3)款舉行的會議，而 —
 - (i) 該等會議可由不少於業主人數 10%的業主召開；
 - (ii) 根據第(i)節召開會議的通知，可由各召集人所指派的一名業主送達。

(5) 凡在根據第(3)款召開的業主會議上，通過決議委任管理委員會，則該委員會委員須以擁有份數的業主親自出席所投或委派代表出席所投的多數票通過的決議委任。”。

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新條文 加入 —

“3A. 向主管當局申請後委任管理委員會

第 3A(1)及(5)條現予修訂，廢除所有“30%”而代以“20%”。”。

新條文 加入 —

“3B. 向審裁處申請後委任管理委員會

第 4(1)(a)條現予修訂，廢除“20%”而代以“10%”。”。

4 刪去該條而代以 —

“4. 會議通知及在會議上的投票

第 5 條現予修訂 —

- (a) 在第(1)款中，廢除“或 4”而代以“、4 或 40C”；
- (b) 在第(3)(b)款中，廢除“英文報章及一份中文”；
- (c) 在第(5)款中 —
 - (i) 廢除“或 4”而代以“、4 或 40C”；

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(ii) 廢除 (c)(iii) 段而代以 —

“(iii) 如未有根據第 (i) 或 (ii) 節委任代表，則可由共有人的其中一人親自出席或委任一名代表出席投票；如在任何會議上，有多於一名共有人就該份數投票，則只有由在土地註冊處註冊紀錄冊內就該份數而記錄排名最先的共有人所投的一票（不論親自或委任代表投票）才視作有效。”。

新條文 加入 —

“4A. 加入條文

現加入 —

“5A. 第 5 條對根據第 40C 條
舉行的會議的適用範圍

就第 5 條適用於根據第 40C 條舉行的會議而言 —

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- (a) 第 5 條中提述“業主”之處，須解釋為提述在建築物的總分割份數中擁有任何特定百分率的份數的業主；
- (b) 第 5(5)(a)條適用於根據第 40C 條舉行的會議，猶如該條中“除公契有其他規定外，業主每擁有一份份數，即有”由“每名業主有權投”取代一樣；
- (c) 第 5(5)(c)條須在猶如已被刪除而由以下字句取代的情況下適用 —

“ (c) 如屬聯權共有權，則 —

- (i) 可由共有人共同委任的一名代表投票；
- (ii) 可由共有人委任其中一名共有人投票；或
- (iii) 如未有根據第 (i) 或 (ii) 節委任代表，則可由共有人的其中一人親自出席或委任一名代表出席投票；如在任何會議上，有多於一名共有人投

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票，則只有由在土地註冊處註冊紀錄冊內記錄排名最先的共有人所投的一票（不論親自或委任代表投票）才視作有效。”。

5B. 業主的百分率的計算

在附表 11 所指明的本條例條文中，提述業主的某個百分率之處 —

- (a) 須解釋為提述業主總人數的該百分率，而無須理會他們在建築物的總分割份數中的擁有權的百分率；而
- (b) 並非解釋為總共擁有該百分率的份數的業主，

而該附表須適用於計算該等條文所提述的業主的百分率。”。

新條文加入 —

**“4B. 管理委員會申請註冊
成立業主立案法團**

第 7 條現予修訂 —

- (a) 在第(1)款中，廢除“或 4”而代以“、4 或 40C”；

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(b) 在第(3)款中 —

- (i) 在(b)段中，在“(1)”之後加入“或 40C”；
- (ii) 在(c)段中，廢除“或 4”而代以“、4 或 40C”；
- (iii) 在(d)段中，廢除“或 4 條以及第 5 條的”而代以“、4 或 40C 條的條文以及第 5、5A 或 5B 條的有關”。”。

新條文 加入 —

“4C. 法團的成立

第 8 條現予修訂 —

- (a) 在第(1)款中，廢除“或 4”而代以“、4 或 40C”；
- (b) 在第(2)(b)款中，廢除“或 4”而代以“、4 或 40C”。”。

6(a) (a) 在建議的第 27(1A)條中，刪去在“師須”之後而在“，而”之前的所有字句而代以 —

“作出報告，說明該收支表及資產負債表是否中肯地反映該法團在該期間內的財務往來情況，及在該期間結束時該法團的財務狀況”。

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(b) 加入 —

“(1B) 在第(1A)款中，“單位”(flats)並非指車房、停車場或汽車間。”。

7 在建議的第 28(2)條中，刪去“成員”而代以“委員”。

新條文 加入 —

“7A. 釋義

第 34D(1)條現予修訂，在“業主委員會”的定義的(a)段中，廢除“或 4”而代以“、4 或 40C”。

新條文 加入 —

“7B. 維持物業的職責

第 34H(1)條現予修訂，廢除“person owns”而代以“person who owns”。

新條文 加入 —

“7C. 管理委員會代替業主委員會

第 34K 條現予修訂，廢除“或 4”而代以“、4 或 40C”。

11 (a) 在建議的第 40B(2)條中，刪去“成員”而代以“委員”。

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(b) 在建議的第 40C 條中 —

(i) 在第(2)(b)款中，刪去“該決議不獲通過”而
代以“沒有通過該決議”；

(ii) 刪去第(3)(b)(ii)款而代以 —

“(ii) 在沒有第(i)節所提及的決議通過
的情況下，由名列於根據第(1)
款作出的命令的業主直接委任
建築物管理代理人。”；

(iii) 加入 —

“(4) 根據本條舉行的會議須按
照第(3)(a)款召開，而該等會議的任何
通知可由名列於根據第(1)款作出的命
令的業主送達。”。

(c) 在建議的第 40D(2)條中，刪去“無限定或”。

新條文

加入 —

“13A. 審裁處在建築物管理方面
所具有的司法管轄權

第 45 條現予修訂 —

(a) 在第(3)款中，在“將”之後加
入 —

“民事司法管轄權以外的
任何司法管轄權或任
何”；

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(b) 在第(4)款中，加入 —

“(aa) 主管當局；” 。” 。

新條文 加入 —

“13B. 管理委員會組織及工作程序

附表 2 現予修訂

(a) 加入 —

“1A. 在第 1 段中，“單位”(flats)並非指車房、停車場或汽車間。”；

(b) 在第 2(1)及 3 段中，廢除“或 4”而代以“、4 或 40C” 。” 。

14 (a) 在標題之後加入 —

“(1)附表 3 現予修訂，廢除第 3(5)(b)(iii)段而代以 —

“(iii) 如未有根據第(i)或(ii)小分節委任代表，則可由共有人的其中一人親自出席或委任一名代表出席投票；如在任何會議上，有多於一名共有人就該份數投票，則只有由在根據第 38 條備存的登記冊內就該份數而記錄排名最先的共有人所投的一票(不論親自或委任代表投票)才視作有效。” 。” 。

(b) 在“附表 3 第 5 段”之前加入“(2)” 。

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(c) 加入 —

“(3)附表 3 現予修訂，加入 —

“9. 為施行第 1(2)及 5 段，各段中提述某
個百分率的業主之處 —

(a) 須解釋為提述業主總人數
的該百分率，而無須理會
他們在建築物的總分割份
數中的擁有權的百分率；
而

(b) 並非解釋為總共擁有該百
分率的份數的業
主。”。

15

刪去在“修訂”之後的所有字句而代以 —

“(a) 在開首處的方括號中，在“34J”之後加入“、
40D”；

(b) 在第 7 段中 —

(i) 在第(1)節中，在“(5)”之後加入“及
(5A)”；

(ii) 廢除第(2)(b)節而代以 —

“(b) 決議中訂有條文，規定須
給予一段不少於 3 個月的
通知期，或不規定通知期
而訂有條文規定將會與經
理人訂立協議以向他支付
代通知金，而款額相等於

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在該通知期內本應會累算
 歸予他的報酬；” ；

(iii) 加入 —

“(5A) 為施行第(1)
 節 —

(a) 只有擁有
 份數並支
 付有關該
 份數的管
 理開支
 (或負有
 支付有關
 該份數的
 管理開支
 的法律責
 任)的業
 主，才有
 權投票；

(b) 該節中提
 述“份數
 不少於
 50%的業
 主”之處
 須解釋為
 提述總共
 擁有不少
 於 50%份
 數並有權
 投票的業
 主。”。

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新條文 加入 —

“16. 如與公契一致則加入的條款

附表 8 現予修訂 —

(a) 加入 —

“11A. 為施行第 11 段，該段中提述“業主人數的 10%”之處 —

(a) 須解釋為提述業主的人數的 10%，而無須理會他們在建築物的總分割份數中的擁有權的百分率；而

(b) 並非解釋為總共擁有達 10% 份數的業主。”；

(b) 廢除第 13(c)(iii)段而代以 —

“(iii) 如未有根據第(i)或(ii)分節委任代表，則可由共有人的其中一人親自出席或委任一名代表出席投票；如在任何會議上，有多於一名共有人就該份數投票，則只有由在土地註冊處註冊紀錄冊內就該份數而記錄排名最先

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的共有人所投的一票（不論親自或委任代表投票）才視作有效；及”。

新條文 加入 —

“17. 加入附表

現加入 —

“附表 11 [第 5B 條]

業主的百分率的計算

就第 5B 條而言 —

- (a) 現指明第 40C(3)條及附表 3 第 1(2)及 5 段以及附表 8 第 11 段；
- (b) (a)段所指明的條文中所提及有關業主的百分率的計算，須根據以下方式作出 —

業權的形式	舉例說明	須計算為
1. 1 個單位由多人共有的業權	3 名共有人擁有 1 個單位	1 名業主
2. 1 名業主擁有多於 1 個單位	1 名業主擁有 35 個單位	1 名業主

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3. 1 名代表 (a) 1 名代 投票權相
或多於 1 表獲 等於獲業
名代表 100 名 主有效委
獲多於 1 業主 任為代表
名業主 委任 的數目。在
委任 舉例說明
 (b) 35 名 的個案
代表獲 中，則為
總共 100 名業
100 名 主。 ” 。
業主委 任 ” 。

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14 刪去該條而代以 —

“14. 法團會議及其程序

附表 3 現予修訂 —

(a) 廢除第 3(5)(b)(iii)段而代以 —

“(iii) 如未有根據第(i)或(ii)小分節委任代表，則可由共有人的其中一人親自出席或委任一名代表出席投票；如在任何會議上，有多於一名共有人就該份數投票，則只有由在根據第 38 條備存的登記冊內就該份數而記錄排名最先的共有人所投的一票（不論親自或委任代表投票）才視作有效。”；

(b) 廢除第 5 段而代以 —

“5. (1) 法團會議的法定人數 —

(a) 如會議有決議建議根據第 30 條解散管理委員會，或根據

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附表 7 終止經理人的委任，須為全部業主的 20% 的人數或 200 名業主；或

- (b) 如屬其他情況，須為全部業主的 10% 的人數或 100 名業主。

- (2) 在確定是否達到會議法定人數時，按照第 4 段獲委任代業主在法團會議中投票的代表，須視作出席會議的業主計算。”；

- (c) 加入 —

“5A. 就第 5 段而言，有關業主人數的計算，須根據以下方式作出 —

- (a) 由 1 名或多於 1 名共有人擁有一個單位，須視作為 1 名業主；
- (b) 1 名業主擁有多於 1 個單位，須視作為 1 名業主；

條次建議修正案

- (c) 1 名代表獲多於 1 名業主委任，業主人數相等於獲業主委任為代表的數目。”；

- (d) 加入 —

“9. 為施行第 1(2)及 5 段，各段中提述某個百分率的業主之處 —

- (a) 須解釋為提述業主總人數的該百分率，而無須理會他們在建築物的總分割份數中的擁有權的百分率；而
- (b) 並非解釋為總共擁有該百分率的份數的業主。”。

15

刪去該條而代以 —

“15. 公契的強制性條款

附表 7 現予修訂 —

- (a) 在開首處的方括號中，在“34J”之後加入“、40D”；
- (b) 在第 7 段中 —
- (i) 廢除第(1)節而代以 —

條次

建議修正案

“(1) 除第(5)及(5A)節另有規定外，法團在為有關目的而召開的業主大會上，可藉由業主按附表 3 第 3(3)段通過的議決，通知經理人終止其委任，而無需給予補償。”；

(ii) 廢除第(2)(b)節而代以 —

“(b) 決議中訂有條文，規定須給予一段不少於 3 個月的通知期，或不規定通知期而訂有條文規定將會與經理人訂立協議以向他支付代通知金，而款額相等於在該通知期內本應會累算歸予他的報酬；”；

(iii) 加入 —

“(5A) 為施行第(1)節，只有擁有份數並支付有關該份數的管理開支(或負有支付有關該份數的管理開支的法律責任)的業主，才有權投票。”。

《2000 年建築物管理（修訂）條例草案》

全體委員會審議階段

由何俊仁議員動議的修正案條次建議修正案

13B 加入 —

- “(c) 在第 3 段中，在“委員會委員”之後加入“及其他職位持有人”；
- (d) 在第 5(1)段中，在“所有委員”後加入“及其他職位持有人”；
- (e) 在第 5(2)(c)段中，廢除“，如管理委員會秘書的職位出缺”；
- (f) 在第 5(2)(d)段中，廢除“，如管理委員會司庫的職位出缺”。”。

15 刪去該條而代以 —

“15. 公契的強制性條款

附表 7 現予修訂 —

- (a) 在開首的方括號中，在“34J”之後加入“、40D”；
- (b) 在第 7(1)段中，廢除“50%”而代以“30%”。”。

Annex XXIII

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

Clause

Amendment Proposed

- 3 (a) By adding before paragraph (a) -
- "(aa) in subsection (1), by repealing "A" and substituting -
- "Except in the case of a meeting to be convened under subsection (3), a";".
- (b) In paragraph (a), by deleting everything after "(2)" and substituting -
- "-
- (i) by repealing "At" and substituting "Subject to subsection (3), at";
- (ii) in paragraph (b), by repealing "50%" and substituting "30%";".
- (c) In paragraph (b) -
- (i) by adding -
- "(4) For the purposes of subsection (3) -

ClauseAmendment Proposed

- (a) the expression "10% of the owners" (業主人數 10%) -
 - (i) means 10% of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
 - (ii) does not mean the owners of 10% of the shares;
- (b) subsection (1)(c) shall not apply to a meeting to be held under subsection (3) and for any such meeting -
 - (i) the meeting may be convened by not less than

Clause

Amendment Proposed

10% of the owners;

- (ii) notice of a meeting convened under subparagraph (i) may be served by an owner nominated by the convenors.

(5) Where a meeting of owners convened under subsection (3) has passed a resolution to appoint a management committee, the members of the management committee are to be appointed by a resolution passed by a majority of the votes of the owners of the shares voting either personally or by proxy."

New

By adding –

**"3A. Appointment of management committee
after application to the Authority**

Section 3A(1) and (5) is amended by repealing "30%" wherever it appears and substituting "20%".

ClauseAmendment Proposed

New By adding –

**"3B. Appointment of management committee
after application to tribunal**

Section 4(1)(a) is amended by repealing "20%" and substituting "10%".

4 By deleting the clause and substituting -

"4. Notice of and voting at meetings

Section 5 is amended -

- (a) in subsection (1), by repealing "or 4" and substituting ", 4 or 40C";
- (b) in subsection (3)(b), by repealing "an English language newspaper, and in a Chinese language" and substituting "a";
- (c) in subsection (5) -
 - (i) by repealing "or 4" and substituting ", 4 or 40C";
 - (ii) by repealing paragraph (c)(iii) and substituting -
 - "(iii) if no appointment has been made under subparagraph (i) or (ii), then

Clause

Amendment Proposed

either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid."."

New

By adding -

"4A. Sections added

The following are added -

ClauseAmendment Proposed**"5A. Application of section 5
to meetings held under
section 40C**

For the purposes of the application of section 5 (notice of and voting at meetings) to meetings held under section 40C -

- (a) the references in section 5 to an "owner" shall be construed as references to a person who is an owner of any particular percentage of the total number of shares into which the building is divided;
- (b) section 5(5)(a) shall apply to a meeting to be held under section 40C, as if the words "shall have one vote" were substituted for "shall, save where the deed of mutual covenant otherwise provides, have one vote in respect of each share which he owns";
- (c) section 5(5)(c) shall apply as if it were deleted and the following substituted -
 - "(c) in the case of joint ownership, the vote may be cast -
 - (i) by a proxy jointly appointed by the co-owners;

Clause

Amendment Proposed

- (ii) by one co-owner appointed by the others; or
- (iii) if no appointment has been made under subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in the register kept at the Land Registry shall be treated as valid."

ClauseAmendment Proposed**5B. Enumeration of owners**

Schedule 11 shall have effect with respect to the enumeration of the percentage of owners referred to in the provisions of the Ordinance specified in that Schedule in the case where, in those provisions as so specified, a reference to a percentage of the owners is

-

- (a) to be construed as a reference to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
- (b) not to be construed as the owners of the total expressed percentage of the shares."."

New

By adding –

"4B. Application by management committee for registration of owners as a corporation

Section 7 is amended -

- (a) in subsection (1), by repealing "or 4" and substituting ", 4 or 40C";

Clause

Amendment Proposed

(b) in subsection (3) –

- (i) in paragraph (b), by adding "or 40C" after "4(1)";
- (ii) in paragraph (c), by repealing "or 4" and substituting ", 4 or 40C";
- (iii) in paragraph (d), by repealing "or 4 and section 5" and substituting ", 4 or 40C and relevant provisions in section 5, 5A or 5B".

New

By adding –

"4C. Incorporation

Section 8 is amended -

- (a) in subsection (1), by repealing "or 4" and substituting ", 4 or 40C";
- (b) in subsection (2)(b), by repealing "or 4" and substituting ", 4 or 40C".

6(a)

(a) In the proposed section 27(1A), by deleting everything after "accountant shall" and substituting -

"report as to whether such account and balance sheet present fairly the financial transactions of the corporation during the period to which the income and expenditure account and balance sheet relate; and the financial position of the corporation at the end of that period, subject to such qualification, if any, as he may think fit."

<u>Clause</u>	<u>Amendment Proposed</u>
	(b) By adding - "(1B) In subsection (1A), "flats" (單位) does not mean any garage, carpark or carport."
7	In the proposed section 28(2), by deleting "成員" and substituting "委員".
New	By adding – "7A. Interpretation Section 34D(1) is amended in paragraph (a) of the definition "owners committee" by repealing "or 4" and substituting ", 4 or 40C".
New	By adding – "7B. Duty to maintain property Section 34H(1) is amended by repealing "person owns" and substituting "person who owns".
New	By adding – "7C. Management committee to replace owners' committee Section 34K is amended by repealing "or 4" and substituting ", 4 or 40C".

<u>Clause</u>	<u>Amendment Proposed</u>
11	<p>(a) In the proposed section 40B(2), by deleting "成員" and substituting "委員".</p> <p>(b) In the proposed section 40C -</p> <p>(i) in subsection (2)(b), by deleting "該決議不獲通過" and substituting "沒有通過該決議";</p> <p>(ii) by deleting subsection (3)(b)(ii) and substituting -</p> <p style="padding-left: 40px;">"(ii) where a resolution of the description mentioned in subparagraph (i) is not passed, by appointment, directly, by the owner named in the order made under subsection (1).";</p> <p>(iii) by adding -</p> <p style="padding-left: 40px;">"(4) A meeting to be held under this section shall be convened in accordance with subsection (3)(a) and notice of any such meeting may be served by the owner named in the order made under subsection (1)."</p> <p>(c) In the proposed section 40D(2), by deleting "an indefinite period or for".</p>
New	<p>By adding -</p> <p>"13A. Jurisdiction of tribunal in relation to building management</p>

ClauseAmendment Proposed

Section 45 is amended -

- (a) in subsection (3), by adding before "jurisdiction" -

"any jurisdiction other than civil jurisdiction or any";

- (b) in subsection (4), by adding -

"(aa) the Authority;".

New

By adding -

"13B. Composition and procedure of management committee

The Second Schedule is amended -

- (a) by adding -

"1A. In paragraph 1, "flats" (單位) does not mean any garage, carpark or carport.";

- (b) in paragraphs 2(1) and 3, by repealing "or 4" and substituting ", 4 or 40C".

14

(a) By adding after the heading -

"(1) The Third Schedule is amended by repealing paragraph 3(5)(b)(iii) and substituting -

Clause

Amendment Proposed

"(iii) if no appointment has been made under sub-sub-subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register maintained under section 38 shall be treated as valid."."

(b) By adding "(2)" before "Paragraph 5 of".

(c) By adding -

"(3) The Third Schedule is amended by adding -

"9. For the purposes of paragraphs 1(2) and 5, the references in those paragraphs to a percentage "of the owners" shall -

(a) be construed as references to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and

ClauseAmendment Proposed

- (b) not be construed as the owners of the total expressed percentage of the shares."."

15 By deleting everything after "amended" and substituting –

"–

- (a) in the square brackets at the beginning, by adding ", 40D" after "34J";

- (b) in paragraph 7 -

- (i) in subparagraph (1), by adding "and (5A)" after "(5)";

- (ii) by repealing subparagraph (2)(b) and substituting -

"(b) provision is made in the resolution for a period of not less than 3 months notice or, in lieu of notice, provision is made for an agreement to be made with the manager for the payment to him of a sum equal to the amount of remuneration which would have accrued to him during that period;"

Clause

Amendment Proposed

(iii) by adding -

"(5A) For the purposes of
subparagraph (1) -

- (a) only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote;
- (b) the reference in subparagraph (1) to "the owners of not less than 50% of the shares" shall be construed as a reference to the owners of not less than 50% of the shares who are entitled to vote."."

ClauseAmendment Proposed

New By adding –

"16. Terms added if consistent with deed of mutual covenant

The Eighth Schedule is amended -

(a) by adding -

"11A. For the purposes of paragraph 11, the reference in that paragraph to "10% of the owners" shall -

(a) be construed as a reference to 10% of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and

(b) not be construed as the owners of 10% of the shares.";

Clause

Amendment Proposed

(b) by repealing paragraph 13(c)(iii) and substituting -

"(iii) if no appointment has been made under sub-subparagraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid; and".

New

By adding -

"17. Schedule added

The following is added -

"SCHEDULE 11

[s. 5B]

ENUMERATION OF OWNERS

ClauseAmendment Proposed

For the purposes of section 5B -

- (a) section 40C(3) and paragraphs 1(2) and 5 of the Third Schedule and paragraph 11 of the Eighth Schedule are specified;
- (b) the enumeration of the percentage of owners mentioned in the provisions specified in paragraph (a) shall be computed as follows -

Form of ownership	Illustration	To be counted as
1. Multiple ownership of 1 flat	1 flat with 3 co-owners	1 owner
2. 1 owner owning more than 1 flat	1 owner owning 35 flats	1 owner
3. 1 person or more than 1 holding proxies from more than 1 owner	(a) 1 person holding proxies from 100 owners (b) 35 persons holding proxies from 100 owners in aggregate	Voting rights equal to the number of valid proxies held. In the cases as illustrated, 100 owners."."

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Honourable Gary CHENG Kai-nam

Clause

Amendment Proposed

14 By deleting the clause and substituting -

"14. Meetings and procedure of corporation

The Third Schedule is amended -

(a) by repealing paragraph 3(5)(b)(iii) and substituting -

"(iii) if no appointment has been made under sub-sub-paragraph (i) or (ii), then either personally or by proxy by one of the co-owners; and, in the case of any meeting where more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, in person or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register maintained under section 38 shall be treated as valid.";

(b) by repealing paragraph 5 and substituting -

ClauseAmendment Proposed

"5. (1) The quorum at a meeting of the corporation shall be -

(a) 20% of the owners or 200 owners, in the case of a meeting at which a resolution for the dissolution of the management committee under section 30, or termination of manager's appointment in accordance with the Seventh Schedule is proposed; or

(b) 10% of the owners or 100 owners in any other case.

(2) A proxy appointed in accordance with paragraph 4 to give the vote of an owner at a meeting of the

Clause

Amendment Proposed

corporation shall, for the purposes of establishing a quorum, be treated as being an owner present at that meeting.";

(c) by adding -

"5A. For the purposes of paragraph 5, the enumeration of the number of owners shall be computed as follows -

- (a) 1 flat with 1 or more than 1 co-owner shall be counted as 1 owner;
- (b) 1 owner owning more than 1 flat shall be counted as 1 owner;
- (c) a person holding proxies from more than 1 owner, the number of owners shall be equal to the number of proxies held by that person.";

(d) by adding -

"9. For the purposes of paragraphs 1(2) and 5, the

ClauseAmendment Proposed

references in those paragraphs to a percentage "of the owners" shall -

- (a) be construed as references to the total expressed percentage of the number of persons who are owners without regard to their ownership of any particular percentage of the total number of shares into which the building is divided; and
- (b) not be construed as the owners of the total expressed percentage of the shares."."

15

By deleting the clause and substituting -

"15. Mandatory terms in deeds of mutual covenant

The Seventh Schedule is amended -

- (a) in the square brackets at the beginning, by adding ", 40D" after "34J";
- (b) in paragraph 7 -

Clause

Amendment Proposed

- (i) by repealing subparagraph (1) and substituting -

"(1) Subject to subparagraph (5) and (5A), at a general meeting convened for the purpose a corporation may, by a resolution of the owners in accordance with paragraph 3(3) of the Third Schedule, terminate by notice the manager's appointment without compensation.";

- (ii) by repealing subparagraph (2)(b) and substituting -

"(b) provision is made in the resolution for a period of not less than 3 months notice or, in lieu of notice, provision is made for an agreement to be made with the manager for the payment to him of a sum equal to the amount of remuneration which would have accrued to him during that period;"

ClauseAmendment Proposed

(iii) by adding -

"(5A) For the purposes of subparagraph (1), only the owners of shares who pay or who are liable to pay the management expenses relating to those shares shall be entitled to vote."."

BUILDING MANAGEMENT (AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Honourable Albert HO Chun-yan

<u>Clause</u>	<u>Amendment Proposed</u>
13B	<p>By adding -</p> <ul style="list-style-type: none">(c) in paragraph 3, by adding "and the holders of office" after "the members";(d) in paragraph 5(1), by adding "and the holders of office" after "all members";(e) in paragraph 5(2)(c), by repealing, ", if the office of secretary of the management committee is vacant";(f) in paragraph 5(2)(d), by repealing ", if the office of treasurer of the management committee is vacant".
15	<p>By deleting the clause and substituting -</p> <p>"15. Mandatory terms in deeds of mutual covenant</p> <p>The Seventh Schedule is amended -</p> <ul style="list-style-type: none">(a) in the square brackets at the beginning, by adding ", 40D" after "34J";(b) in paragraph 7(1), by repealing "50%" and substituting "30%".