C027e

A BILL

To

Amend The Ombudsman Ordinance and to make a related amendment to the Prevention of Bribery Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as The Ombudsman (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Director of Administration by notice published in the Gazette.

2. Interpretation

Section 2(1) of The Ombudsman Ordinance (Cap. 397) is amended in the definition of "Ombudsman" by repealing "appointed under section 3" and substituting "referred to in section 3(2)(a)".

3. Appointment and tenure of office

Section 3 is amended---

(a) in subsection (1), by repealing "there shall be a public officer" and substituting "a person shall be appointed who is to be";

(b) by repealing subsections (2) and (3) and substituting---

"(2) The Ombudsman---

(a) is a corporation sole with perpetual succession;

(b) may sue and be sued in that corporate name; and

(c) shall have an official seal.

(3) The appointment under subsection (1) shall be made in writing under the hand of the Chief Executive and the person appointed shall, subject to subsection (4), hold office for a period of 5 years and shall be eligible for reappointment.";

(c) in subsections (5) and (6), by adding "the person appointed to be" before "the Ombudsman";

(d) by adding---

"(7) The financial and report provisions set out in Schedule 1A shall have effect with respect to the Ombudsman.".

4. Ombudsman to hold no other office

Section 4 is amended by adding "person appointed to be the" after "The".

5. Filling of temporary vacancy

Section 5 is amended---

(a) in subsection (1)---

(i) by adding "the person appointed to be" after "If";

(ii) by repealing "as the Ombudsman" and substituting "as he";

(iii) by repealing "a new Ombudsman is appointed" and substituting "another person is appointed to be the Ombudsman";

(b) in subsection (2)---

(i) by repealing "Section 4" and substituting "Sections 4 and 6B(3)";

(ii) by repealing "it applies to" and substituting "they apply to the person appointed to be".

6. Sections added

The following are added in Part II---

"6A. Advisers

The Ombudsman may from time to time appoint such advisers as he considers necessary to assist him in the performance of his functions under this Ordinance.

6B. Ombudsman not to be regarded as servant or agent of Government

(1) Subject to subsections (2) and (3), the Ombudsman shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

(2) For the purposes of the Prevention of Bribery Ordinance (Cap. 201), the person appointed to be the Ombudsman shall be deemed to be a public servant within the meaning of section 2 of that Ordinance.

(3) For the purposes of the Public Finance Ordinance (Cap. 2), the person appointed to be the Ombudsman shall be deemed to be a public officer and shall be designated as the controlling officer in respect of the estimates of expenditure of the Ombudsman under section 12 of that Ordinance.".

7. Part heading amended

The heading to Part III is amended by adding "and Powers" after "Functions".

8. Section added

The following is added---

"7A. Powers of Ombudsman

The Ombudsman may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions, and in particular, but without prejudice to the generality of the foregoing, may---

(a) acquire and hold property of any description if in the opinion of the Ombudsman such property is necessary for---

(i) the accommodation of the Ombudsman or any person appointed under section 6(1);

(ii) the performance of any of his functions,

and, subject to the terms and conditions upon which such property is held, dispose

of it;

(b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation.".

9. Section added

The following is added in Part III---

"9A. Fees

(1) The Ombudsman may charge any person such reasonable fee as he determines in respect of any service---

(a) approved by the Director of Administration; and

(b) provided by the Ombudsman to that person under this Ordinance, otherwise than in pursuance of an obligation imposed by this Ordinance.

(2) The Ombudsman may recover any fee payable under subsection (1) as a civil debt due to him.".

10. Sections added

The following are added in Part IV---

"11A. Preliminary inquiries

For the purposes of determining whether to undertake an investigation, the Ombudsman may conduct such preliminary inquiries as he considers appropriate.

11B. Dealing with complaints by mediation

(1) The Ombudsman may, at any time, decide to deal with a complaint by mediation under this section.

(2) The mediator in any mediation under this section is to be---

(a) the Ombudsman; or

(b) a person authorized under subsection (3).

(3) For the purposes of subsection (2)(b), the Ombudsman may authorize any person appointed under section 6(1) as a mediator in any mediation.

(4) Participation in the mediation by the complainant and the organization affected is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) If an attempt to deal with a complaint by mediation under this section is unsuccessful---

(a) the complaint is to be treated under this Part as if the mediation had not taken place; and

(b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation---

(a) shall not be admissible in evidence in any subsequent investigation of the

complaint concerned unless the person who said or admitted the thing, or to whom the document related, consents to its admission;

(b) shall not be admissible in evidence against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.".

11. Evidence

Section 13(3)(a) is amended by repealing "a public officer" and substituting "an organization".

12. Ombudsman and his staff to maintain secrecy

Section 15(1) and (2) is amended by adding "or 6A" after "section 6".

13. Publication of reports

Section 16A(2) is amended---

(a) by repealing "be prepared in such manner that" and substituting "disclose";

(b) by repealing everything after "investigation" where it secondly appears and substituting a full stop.

14. Privilege

Section 18(a) is amended by repealing ", 17 or 22" and substituting "or 17 or section 3(4)(a) of Schedule 1A".

15. Section added

The following is added---

"18A. Immunity

No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.".

16. Annual report

Section 22 is repealed.

17. Power to amend Schedules

Section 24 is amended by repealing "Schedule 1" and substituting "Schedules 1 and 1A".

18. Organizations to which this Ordinance applies

Part I of Schedule 1 is amended by adding---

"Equal Opportunities Commission.

Privacy Commissioner for Personal Data.".

19. Schedule 1A added

The following is added---

"SCHEDULE 1A [ss. 3(7), 18(a) & 24]

Finances, etc. of Ombudsman

1. Resources of Ombudsman

The resources of the Ombudsman shall consist of---

(a) all money appropriated by the Legislative Council under section 6(3) of this Ordinance;

(b) all other money and property, including fees, interest and accumulations of income received by the Ombudsman.

2. Investment of surplus funds

(1) Subject to subsection (2), the Ombudsman may invest his funds that are not immediately required to be expended.

(2) The Ombudsman shall not invest funds pursuant to subsection (1) except in such form of investment as the Director of Administration, after consulting with the Secretary for the Treasury, approves.

3. Accounts, audit and annual report of Ombudsman

(1) The Ombudsman shall cause proper accounts to be kept of all his financial transactions.

(2) The Ombudsman shall, as soon as practicable after the end of a financial year, prepare a statement of the accounts of the Ombudsman, which statement shall include an income and expenditure account and a balance sheet.

(3) The Ombudsman shall appoint an auditor who shall, as soon as practicable after the end of a financial year, audit the accounts required under subsection (1) and the statement of accounts required under subsection (2) and shall submit a report on the statement to the Ombudsman.

(4) The Ombudsman shall, as soon as practicable and in any case within 6 months after the end of a financial year, furnish---

(a) a report on his activities including a general survey of developments, during that year, in respect of matters falling within the scope of his functions;

(b) a copy of the statement of accounts required under subsection (2); and

(c) the auditor's report on the statement,

to the Chief Executive who shall cause them to be tabled in the Legislative Council.

4. Director of Audit's examination

(1) The Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the Ombudsman has expended his resources in performing his functions and exercising his powers.

(2) Subject to subsection (3), the Director of Audit shall have a right of access at all reasonable times to all such documents as he may reasonably require for conducting an examination under this section and shall be entitled to require from

any person holding or being accountable for any such document such information and explanation as he considers reasonably necessary for that purpose.

(3) Subsection (2) applies only to documents in the custody and control of the Ombudsman.

(4) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.

(5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Ombudsman.

5. Exemption from taxation

(1) The Ombudsman shall be exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

(2) For the avoidance of doubt, it is declared that subsection (1) does not apply to or in relation to any salary or other benefit referred to in section 3(6) of this Ordinance payable out of the general revenue.".

20. Transitional

(1) Subject to subsection (2), the person holding office as The Ombudsman immediately before the commencement of this section is, on that commencement, taken to have been appointed as The Ombudsman under section 3 of The Ombudsman Ordinance (Cap. 397) with same terms and conditions as those which were applicable to the person immediately before that commencement.

(2) The person taken to have been appointed as The Ombudsman under subsection (1) holds that office only for the unexpired term under his previous appointment, but is eligible for reappointment under section 3(3) of The Ombudsman Ordinance (Cap. 397).

Related Amendments to Prevention
of Bribery Ordinance

21. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding---

"98. The Ombudsman.".

Explanatory Memorandum

The main purpose of this Bill is to amend The Ombudsman Ordinance (Cap. 397) ("the Ordinance")---

(a) to make The Ombudsman become a corporation sole, to amend the definition of "Ombudsman" in section 2(1) of the Ordinance, and to change the references to "the Ombudsman" in sections 3, 4 and 5 of the Ordinance to "the person appointed to be the Ombudsman" (clauses 2, 3, 4 and 5);

(b) to enable The Ombudsman to appoint advisers (clause 6, new section 6A);

(c) to provide that The Ombudsman is not a Government servant and does not enjoy the immunity of the Government, but is deemed to be a public servant for the purposes of the Prevention of Bribery Ordinance (Cap. 201) and a public officer for the purposes of the Public Finance Ordinance (Cap. 2) (clause 6, new section 6B);

(d) to make a minor amendment to the heading to Part III of the Ordinance (clause 7);

(e) to provide for the general powers of The Ombudsman (clause 8);

(f) to empower The Ombudsman to charge reasonable fees in respect of services provided by him under the Ordinance

(clause 9);

(g) to empower The Ombudsman to conduct preliminary inquiries (clause 10, new section 11A);

(h) to empower The Ombudsman to deal with complaints by mediation (clause 10, new section 11B);

(i) to enable organizations specified in Schedule 1 to the Ordinance to disclose information to The Ombudsman for the purposes of an investigation (clause 11);

(j) to require persons appointed under new section 6A to maintain secrecy (clause 12);

(k) to enable The Ombudsman to publish a report on his investigation even if the identity of any person aggrieved, any complainant, or any officer of an organization can be ascertained from the report (clause 13);

(l) to confer immunity on persons doing anything in good faith in the performance of functions or in the exercise of powers under the Ordinance (clause 15);

(m) to repeal a provision on The Ombudsman's annual reports (clause 16);

(n) to extend the jurisdiction of The Ombudsman to cover the Equal Opportunities Commission and the Privacy Commissioner for Personal Data (clause 18);

(o) to deal with the financial sides of The Ombudsman (clause 19, new Schedule 1A)---

(i) section 1 of that Schedule deals with resources;

(ii) section 2 of that Schedule provides for the use of surplus funds;

(iii) section 3 of that Schedule provides for accounts, audit and annual reports;

(iv) section 4 of that Schedule provides for the Director of Audit's examination;

(v) section 5 of that Schedule exempts The Ombudsman from taxation;

(p) to make a transitional arrangement for the person currently holding office as The Ombudsman (clause 20).

2. The Bill also makes a related amendment to the Prevention of Bribery Ordinance (Cap. 201) to specify The Ombudsman as a public body under that Ordinance so that

all its employees are put under control of that Ordinance (clause 21).