

BRIEF FOR LEGISLATIVE COUNCIL

Prevention of Bribery Ordinance
(Chapter 201)
Independent Commission Against Corruption Ordinance
(Chapter 204)

ADAPTATION OF LAWS BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 27 November 2001, the Council ADVISED and the Chief Executive ORDERED that A the Adaptation of Laws Bill 2001 (the Bill), at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. Article 160 of the Basic Law states that –

“Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People’s Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.”

3. Article 8 of the Basic Law states that –

“The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any

amendment by the legislature of the Hong Kong Special Administrative Region.”

4. The Standing Committee of the National People’s Congress (NPCSC), on 23 February 1997, published a decision which set out a number of principles for interpreting the laws which were adopted by the NPCSC to continue to remain in force as laws of the Hong Kong Special Administrative Region (HKSAR). These principles were included in the Hong Kong Reunification Ordinance and were subsequently incorporated into the laws of the HKSAR as section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance.

5. Despite these guiding principles on construing terminology inconsistent with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People’s Republic of China, it is considered unacceptable to retain such terminology in our laws after reunification. Accordingly, we need to introduce further legislation to effect the necessary textual amendments.

Adaptation of “Crown Servant”

6. The Prevention of Bribery Ordinance (POBO) contains penal provisions against corrupt acts. The POBO is constructed in such a way that three categories of persons are subject to different degrees of control, with “Crown servant” being subject to the most stringent control, followed by “public servant” and ordinary citizens. A note summarizing the construction of the POBO is at Annex B for easy reference.

B

7. The adaptation of “Crown servant” is not straightforward. “Crown servant” is defined in section 2 of the POBO and section 2 of the Independent Commission Against Corruption Ordinance (ICACO) as “a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government”.

8. A straightforward approach would be to adapt “Crown servant” to “Government officer” with the adapted definition to read as “a person holding an office of emolument, whether permanent or temporary, under the Government”.

9. However, legal advice pointed out that certain persons who fell within the definition of “Crown servant” might not be construed to fall automatically within the definition of “Government officer”. The term “under the Government” in the proposed adapted definition could be considered as narrower in scope than the term “under the Crown in right of the Government” in the original definition. Doubts were expressed specifically to five offices of “Crown servant” which might not fall automatically within the definition of “Government officer”.

10. In order to remove any doubt and to preserve the legal effect of those provisions concerning “Crown servant” under the POBO and the ICACO, we have to prescribe the five offices in its adapted definition. Such an approach would achieve certainty of meaning which is of crucial importance in an ordinance that contains penal provisions.

Legislative Intent of “Crown Servant”

11. According to the legislative intent, “Crown servant” was to be defined more narrowly than “public servant” such that the lawful acceptance of advantages by Crown servants was to be governed by circulars issued by the then Governor. “Public servant” was to be defined to mean any employee and member of a public body¹, whether temporary or permanent and whether paid or unpaid.

The Adapted Definition

12. Legal advice is that whether a person is a holder of an office of emolument under an institution is to be determined based on a totality of facts which include –

- (a) who has the power to appoint and dismiss him;
- (b) who has the power to exercise control over him and the degree of such control;
- (c) the nature of his duties; and

¹ Public body means (a) the Government, (b) the Executive Council, (c) the Legislative Council, (d) the Urban Council, (e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council, and (f) any board, commission, committee or other body specified in the Schedule when the Bill was enacted in 1970.

- (d) the fund from which his emoluments are paid.

13. On this basis, legal advice confirmed that five offices, which also fell within the definition of “Crown servant” (holder of an office of emolument under the Crown in right of the Government), might not be automatically construed as “Government officer” (holder of an office of emolument under the Government) due to their specific and independent nature of operation. The five offices are –

- (a) the Monetary Authority and staff of the Authority;
- (b) the Director of Audit;
- (c) the Chairman of the Public Service Commission;
- (d) the Commissioner of the Independent Commission Against Corruption and staff of the Commission; and
- (e) judicial officers, both permanent and temporary, and staff of the Judiciary.

14. The above five offices share the characteristics of receiving direct funding from the Government and performing duties of a public nature. However, these offices do not form part of the permanent establishment of the Civil Service and the functions of the offices are performed in an independent manner. Taking into account these considerations, the Department of Justice has advised that the status of these offices as being “offices of emolument under the Government” is not beyond doubt. It is considered prudent, therefore, to make express reference to them in the proposed adapted definition to remove any doubt. Rather than the term “Government officer”, we propose to use a neutral term “prescribed officer” in the place of “Crown servant”. This is to avoid deeming the group of judicial officers as “Government officer” which runs contrary to the principle of the separation of powers.

THE BILL

15. Apart from the adaptation of “Crown servant”, other proposed amendments are merely terminological changes. For example, references to “the Governor” and “the Governor in Council” are to be replaced by “the Chief Executive” and “the Chief Executive in Council”

respectively. The existing provisions which are being amended are at C, D & E Annexes C, D and E.

COMMENCEMENT

16. The Bill provides that, subject to Article 12² of the Hong Kong Bill of Rights, the adaptations when passed into law shall take effect retrospectively, as from the date of the establishment of the Hong Kong Special Administrative Region.

PUBLIC CONSULTATION

17. Since adaptation of laws is in line with government policy, consultation with the public is not considered necessary.

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

² Article 12 of the Hong Kong Bill of Rights states that –

“(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”

BINDING EFFECT

20. The Bill does not affect the current binding effect of the existing provisions of the Ordinances covered by the Bill.

FINANCIAL AND STAFFING IMPLICATIONS

21. There are no financial or staffing implications arising from the Bill.

LEGISLATIVE TIMETABLE

22. The legislative timetable as approved by the Executive Council is as follows -

Publication in the Gazette	7 December 2001
First Reading and commencement of Second Reading debate	19 December 2001
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

PUBLICITY

23. A press release will be issued. A spokesman will be made available to answer media enquiries.

ENQUIRIES

24. For enquiries on the brief, please contact Ms Maggie Wong, Assistant Director of Administration (1) on 2810 3503.

Administration Wing
Chief Secretary for Administration's Office
6 December 2001

ADAPTATION OF LAWS BILL 2001

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A BILL

To

Adapt certain Ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Adaptation of Laws Ordinance 2001.

2. Commencement

(1) (a) This Ordinance, except as provided in subsections (2) to (11), shall be deemed to have come into operation on 1 July 1997.

(b) Paragraph (a) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

(2) Section 2 of Schedule 3 shall be deemed to have come into operation on 9 June 2000.

(3) Sections 4, 5 and 6 of Schedule 3 shall be deemed to have come into operation on 1 July 2001.

(4) Section 16 of Schedule 3 shall be deemed to have come into operation on 26 September 1997.

(5) Section 17 of Schedule 3 shall be deemed to have come into operation on 20 February 1998.

(6) Sections 18 and 19 of Schedule 3 shall come into operation on the day appointed for the commencement of sections 2 and 5 of the Interception of Communications Ordinance (Cap. 532).

(7) Section 20 of Schedule 3 shall be deemed to have come into operation on 21 January 1998.

(8) Section 21 of Schedule 3 shall be deemed to have come into operation on 1 August 1999.

(9) Section 22 of Schedule 3 shall be deemed to have come into operation on 3 October 1997.

(10) Section 23 of Schedule 3 shall be deemed to have come into operation on 19 March 1999.

(11) Section 24 of Schedule 3 shall be deemed to have come into operation on 21 September 2001.

3. Amendment of Ordinances

The Ordinances specified in the Schedules are amended in the manner indicated in those Schedules.

SCHEDULE 1

[s. 3]

PREVENTION OF BRIBERY ORDINANCE

1. Section 2 of the Prevention of Bribery Ordinance (Cap. 201) is amended -

(a) in subsection (1) -

(i) by repealing the definition of

"Commissioner" and substituting -

" "Commissioner" (專員) means the

Commissioner of the Independent
Commission Against Corruption
appointed in accordance with
the Basic Law and includes the
Deputy Commissioner appointed
under section 6 of the
Independent Commission Against
Corruption Ordinance (Cap. 204)
and the person appointed to act
as the Commissioner of the
Independent Commission Against
Corruption under section 7(2)
of that Ordinance;" ;

(ii) by repealing the definition of "Crown
servant" and substituting -

" "prescribed officer" (訂明人員)

means -

- (a) any person holding an
office of emolument,
whether permanent or
temporary, under the
Government; and
- (b) the following persons
(to the extent that
they are not persons

included in paragraph

(a)) -

(i) the Monetary

Authority

appointed under

section 5A of

the Exchange

Fund Ordinance

(Cap. 66) and

any person

appointed under

section 5A(3) of

that Ordinance;

(ii) Director of

Audit;

(iii) Chairman of the

Public Service

Commission;

(iv) Commissioner of

the Independent

Commission

Against

Corruption and

any member of

the staff of

that Commission;

- (v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary;"
- (iii) in the definition of "public body", in paragraph (e), by repealing "Governor or the Governor in Council" and substituting "Chief Executive or the Chief Executive in Council";
- (iv) in the definition of "公共機構" -
 - (A) in paragraph (b), by repealing "行政局" and substituting "行政會議";
 - (B) in paragraph (c), by repealing "立法

局" and substituting "立法會";

(v) in the definition of "public servant", by
repealing "Crown servant" and
substituting "prescribed officer";

(b) in subsection (3), by repealing "Governor" and
substituting "Chief Executive".

2. Section 3 is amended -

(a) by repealing "Crown servant" and substituting
"prescribed officer";

(b) by repealing "Governor" and substituting "Chief
Executive".

3. Section 4(3) is amended by repealing "Crown servant" and
substituting "prescribed officer".

4. Section 8(1) is amended by repealing "Crown servant" and
substituting "prescribed officer".

5. Section 10(1) is amended by repealing "Crown servant" and
substituting "prescribed officer".

6. Section 12(2) and (3) is amended by repealing "Crown" and
substituting "Government".

7. Section 12AA(8) is amended by repealing "Crown" and

substituting "Government".

8. Section 21A(1) is amended by repealing "Crown servant" wherever it appears and substituting "prescribed officer".

9. Section 35 is amended by repealing "Governor in Council" and substituting "Chief Executive in Council".

SCHEDULE 2

[s. 3]

INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE
AND ITS SUBSIDIARY LEGISLATION

Independent Commission Against Corruption Ordinance

1. Section 1 of the Independent Commission Against Corruption Ordinance (Cap. 204) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

2. Section 2 is amended -

(a) by repealing the definition of "Commissioner" and substituting -

" "Commissioner" (廉政專員) means the

Commissioner of the Independent

Commission Against Corruption appointed

in accordance with the Basic Law and

includes the Deputy Commissioner

appointed under section 6;" ;

(b) by repealing the definition of "Crown servant" and substituting -

"prescribed officer" (訂明人員) means -

(a) any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b) the following persons (to the extent that they are not persons included in paragraph

(a)) -

(i) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66) and any person appointed under section 5A(3) of that Ordinance;

(ii) Director of Audit;

(iii) Chairman of the Public Service Commission;

(iv) Commissioner of the

Independent

Commission Against
Corruption and any
member of the staff
of that Commission;

- (v) any judicial officer
holding a judicial
office specified in
Schedule 1 to the
Judicial Officers
Recommendation
Commission Ordinance
(Cap. 92) and any
judicial officer
appointed by the
Chief Justice, and
any member of the
staff of the
Judiciary;"

(c) by adding -

"Public Service (Administration) Order" (《公務
人員(管理)命令》) means -

- (a) the Public Service
(Administration) Order 1997
(Executive Order No. 1 of 1997);
- (b) the Public Service

(Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and

(c) any other regulation made or any direction given under that Order,

as amended from time to time.".

3. Section 5 is amended -

(a) by repealing subsection (1) and substituting -

"(1) The Commissioner, subject to the orders and control of the Chief Executive, shall be responsible for the direction and administration of the Commission.";

(b) in subsection (2), by repealing "Governor" and substituting "Chief Executive";

(c) in subsection (3) -

(i) by repealing "be appointed" and substituting "hold office";

(ii) by repealing "Governor" and substituting "Chief Executive";

(d) by repealing subsection (4) and substituting -

"(4) The Commissioner shall not, while he holds the office of the Commissioner,

discharge the duties of any other prescribed officer.".

4. Section 6 is amended by repealing "Governor" and substituting "Chief Executive".

5. Section 7 is amended by repealing "Governor" where it twice appears and substituting "Chief Executive".

6. Section 8 is amended -

(a) in subsections (1), (2)(c)(ii) and (d) and (3), by repealing "Governor" and substituting "Chief Executive";

(b) in subsection (4), by repealing "Colonial Regulations" where it twice appears and substituting "Public Service (Administration) Order".

7. Section 10(1) is amended by repealing "Crown servant" and substituting "prescribed officer".

8. Section 10A(8) is amended by repealing "Governor" and substituting "Chief Executive".

9. Section 11(2) is amended -

(a) by repealing "Governor" and substituting "Chief

Executive";

- (b) by repealing "Colonial Regulations" and substituting "Public Service (Administration) Order".

10. Section 12 is amended -

- (a) by repealing "Governor" and substituting "Chief Executive";
- (b) in paragraph (b)(iv) and (vii), by repealing "Crown servant" wherever it appears and substituting "prescribed officer";
- (c) in paragraph (c) -
 - (i) by repealing "Crown servant" and substituting "prescribed officer";
 - (ii) by repealing "Governor" and substituting "Chief Executive".

11. Section 13 is amended -

- (a) in subsection (1)(b) -
 - (i) by repealing "Crown servant" and substituting "prescribed officer";
 - (ii) by repealing "Crown or" and substituting "prescribed officer or";
- (b) in subsection (2)(a), by repealing "Crown servant" and substituting "prescribed officer".

12. Section 14 is amended by repealing "Governor" wherever it appears and substituting "Chief Executive".

13. Section 15(1) is amended by repealing "Governor" and substituting "Chief Executive".

14. Section 16(2) is amended by repealing "Governor" and substituting "Chief Executive".

15. Section 17 is amended -

(a) in subsection (1), by repealing "Governor" where it twice appears and substituting "Chief Executive";

(b) in subsection (2) -

(i) by repealing "Governor" and substituting "Chief Executive";

(ii) by repealing "立法局" and substituting "立法會".

16. Section 17A is amended -

(a) in subsection (1), by repealing "總督特派廉政專員公署福利基金" and substituting "廉政公署福利基金";

(b) in subsection (2)(b), by repealing "立法局" and substituting "立法會".

17. Section 18A(1)(c) and (2) is amended by repealing "Governor" and substituting "Chief Executive".

**Independent Commission Against Corruption
(Treatment of Detained Persons) Order**

18. Paragraph 1 of the Independent Commission Against Corruption (Treatment of Detained Persons) Order (Cap. 204 sub. leg.) is amended by repealing "《總督特派廉政專員公署(被扣留者的處理)令》" and substituting "《廉政公署(被扣留者的處理)令》".

19. Paragraph 18(1) is amended by repealing "Governor" and substituting "Chief Executive".

SCHEDULE 3

[s. 3]

AMENDMENTS TO OTHER ORDINANCES

Public Service Commission Ordinance

1. The First Schedule to the Public Service Commission Ordinance (Cap. 93) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Audit Ordinance

2. Schedule 1 to the Audit Ordinance (Cap. 122) is amended, in item 7 -

(a) by repealing "總督特派廉政專員公署福利基金" and

substituting "廉政公署福利基金";

- (b) by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Banking Ordinance

3. Section 120(5)(d) of the Banking Ordinance (Cap. 155) is amended by repealing "廉政專員公署" and substituting "廉政公署".

Police Force Ordinance

4. Section 3 of the Police Force Ordinance (Cap. 232) is amended, in the definition of "Independent Commission Against Corruption", by repealing "(總督特派廉政專員公署)" and substituting "(廉政公署)".

5. Section 59E(1)(b)(ii) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

6. Section 59G is amended -

- (a) in subsection (1)(b), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》";
- (b) in subsection (2)(i), by repealing "總督特派廉政專員公署" and substituting "廉政公署".

Prison Rules

7. Rule 1A of the Prison Rules (Cap. 234 sub. leg.) is amended, in the definition of "specified person", in paragraph (i), by repealing "appointed under section 5 of the Independent Commission Against Corruption Ordinance (Cap. 204)".

Public Order Ordinance

8. Section 17C(2)(h) of the Public Order Ordinance (Cap. 245) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Peak Tramway By-laws

9. By-law 25 of the Peak Tramway By-laws (Cap. 265 sub. leg.) is amended by repealing "廉政專員公署" and substituting "廉政公署".

Kowloon-Canton Railway Corporation By-laws

10. By-law 96 of the Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg.) is amended by repealing "港督特派廉政專員公署" and substituting "廉政公署".

Road Traffic Ordinance

11. Schedule 8 to the Road Traffic Ordinance (Cap. 374) is amended, in paragraph 5(h), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

12. Schedule 10 is amended, in paragraph 5(h), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Hong Kong Bill of Rights Ordinance

13. The Schedule to the Hong Kong Bill of Rights Ordinance (Cap. 383) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Fugitive Offenders Ordinance

14. Section 2(1) of the Fugitive Offenders Ordinance (Cap. 503) is amended, in the definition of "獲授權人員", in paragraph (c), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Justices of the Peace Ordinance

15. Schedule 1 to the Justices of the Peace Ordinance (Cap. 510)

is amended, in Part II, in section 1, by repealing "《總督特派廉政專員公署(被扣留者的處理)令》" and substituting "《廉政公署(被扣留者的處理)令》".

Mutual Legal Assistance in Criminal Matters Ordinance

16. Section 2(1) of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended, in the definition of "獲授權人員", in paragraph (c), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

17. Section 12(12)(c) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Interception of Communications Ordinance

18. Section 2 of the Interception of Communications Ordinance (Cap. 532) is amended, in the definition of "執法人員", in paragraph (b), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

19. Section 5(1)(c) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

**Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) Regulation**

20. Section 96(2) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg.) is amended by repealing "《廉政專員公署條例》" and substituting "《廉政公署條例》".

**Electoral Affairs Commission (Electoral Procedure)
(District Councils) Regulation**

21. Section 94(2) of the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation (Cap. 541 sub. leg.) is amended by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Legislative Council Ordinance

22. Section 39(5) of the Legislative Council Ordinance (Cap. 542) is amended, in the definition of "訂明的公職人員", in paragraph (b), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

District Councils Ordinance

23. Section 2 of the District Councils Ordinance (Cap. 547) is

amended, in the definition of "訂明公職人員", in paragraph (b), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Chief Executive Election Ordinance

24. Section 2(1) of the Chief Executive Election Ordinance (Cap. 569) is amended, in the definition of "訂明公職人員", in paragraph (b), by repealing "《總督特派廉政專員公署條例》" and substituting "《廉政公署條例》".

Explanatory Memorandum

The purpose of this Bill is to adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China (clause 3, Schedules 1, 2 and 3).

2. The Ordinances adapted and their respective Schedule numbers under the Bill are -

Prevention of Bribery Ordinance (Cap. 201)	Schedule 1
Independent Commission Against Corruption Ordinance (Cap. 204)	Schedule 2
Amendments to other Ordinances	Schedule 3

3. The Bill also provides that the adaptations (except those referred to in clause 2(2) to (11)) when passed into law shall take effect retrospectively, as from the date of the establishment

of the Hong Kong Special Administrative Region (clause 2).

Application of the Prevention of Bribery Ordinance (POBO)

People subject to the control of the POBO can be divided into three categories –

- (a) ordinary citizens including employees of private companies;
- (b) public servants (including employees of certain statutory bodies, e.g. MTRC, and members of the boards and committees appointed by or on behalf of the Chief Executive or Chief Executive in Council); and
- (c) Crown servants (mainly civil servants).

2. The provisions applying to **public servants** are similar to those applying to **ordinary citizens**, except in three main areas -

- (a) public servants are subject to the POBO provisions for offences committed outside Hong Kong (i.e. section 4) ;
- (b) penalty for certain illegal conduct is heavier for public servants than ordinary citizens (i.e. section 5(2)); and
- (c) public servants are subject to an additional offence of not co-operating with the law enforcement agency.

3. The provisions applying to **Crown servants** are similar to those applying to **ordinary citizens** and **public servants**, except that Crown servants are subject to two more stringent provisions -

- (a) they cannot solicit or accept advantages except with the Chief Executive's approval (i.e. section 3); and
- (b) they are subject to the offence of wealth not commensurate with income (i.e. section 10); and their pecuniary resources or properties can be confiscated (under section 12AA) if they are convicted of such an offence.

Relevant Provisions of the Prevention of Bribery Ordinance (Cap. 201)

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 13/11/2001 04:49 PM -----

Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	2	Heading:	Interpretation	Version Date:	03/03/2000

- (1) In this Ordinance, unless the context otherwise requires-
- " advantage" 利益) means-
- any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
 - any office, employment or contract;
 - any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
 - any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
 - the exercise or forbearance from the exercise of any right or any power or duty; and
 - any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),
- but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), particulars of which are included in an election return in accordance with that Ordinance; (Amended 33 of 1991 s. 2; 10 of 2000 s. 47)
- " agent" 代理人) includes a public servant and any person employed by or acting for another;
- " banker' s books" 銀行簿冊) means-
- any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever;
 - any cheque, voucher, record card, report, letter or other document whatsoever; and
 - any copy of anything referred to in paragraph (a) or (b), used in the ordinary business of a bank; (Replaced 28 of 1980 s. 2)
- " child" 子女) includes a child who is illegitimate or adopted, a foster child and a step-child;
- " Commissioner" 專員) means the person appointed by the Governor to be in charge of the Independent Commission Against Corruption and includes the Deputy Commissioner; (Added 9 of 1974 s. 2)
- " company books" 公司簿冊) means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company; (Amended 28 of 1980 s. 2)
- " court" 法庭) includes a magistrate hearing proceedings with a view to committal for trial under section 85 of the Magistrates Ordinance (Cap 227);
- " Crown servant" 官方僱員) means a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government;
- " document" 文件) includes any register, book, record, tape-recording, any form of computer input or output, and any other material (whether produced mechanically, electrically, or manually or by any other means whatsoever); (Added 28 of 1980 s. 2)
- " entertainment" 款待) means the provision of food or drink, for consumption on the occasion when it is

provided, and of any other entertainment connected with, or provided at the same time as, such provisions;

" investigating officer" 調查人員) means any person authorized by the Commissioner to exercise the powers of an investigating officer under this Ordinance; (Added 9 of 1974 s. 2)

" parents" 父母) includes parents-in-law and step-parents;

" principal" 主事人) includes-

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

" public body" 公共機構) means-

- (a) the Government;
- (b) the Executive Council;
- (c) the Legislative Council;
- (d) (Repealed 78 of 1999 s. 7)
- (da) any District Council; (Added 42 of 1981 s. 27. Amended 8 of 1999 s. 89)
- (db) (Repealed 78 of 1999 s. 7)
- (e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council; and
- (f) any board, commission, committee or other body specified in Schedule 1; (Amended 20 of 1999 s. 2)

" public servant" 公職人員) means any Crown servant and also any employee of a public body and- (Amended 48 of 1996 s. 2)

- (a) in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body; (Amended 20 of 1999 s. 2)
- (aa) in the case of a public body specified in Schedule 2-
 - (i) an office holder of the public body (other than an honorary office holder);
 - (ii) any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of the affairs of the public body; (Added 20 of 1999 s. 2)
- (b) in the case of a public body which is a club or association, any member of the public body who-
 - (i) is an office holder of the body (other than an honorary office holder); or
 - (ii) is vested with any responsibility for the conduct or management of its affairs;
- (c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the institution and, subject to subsection (3), any member of any council, board, committee or other body of the institution, which is itself a public body, or which-
 - (i) is established by or under the Ordinance relating to the institution;
 - (ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and
 - (iii) is not excluded under subsection (3),whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but-
 - (A) the holding of a share by a person in a company which is a public body; or
 - (B) the entitlement of a person to vote at meetings of a club or association which is a public body,

shall not of itself constitute that person a public servant; (Replaced 50 of 1987 s. 2)

" spouse" 配偶) includes a concubine.

- (2) For the purposes of this Ordinance-
- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
 - (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
 - (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.
- (3) The Governor may by notice in the Gazette-
- (a) exclude, for the purposes of the definition of " public servant" in subsection (1), any council, board, committee or other body of any educational institution specified in the notice;
 - (b) exclude from the definition of " public servant" any member of any council, board, committee or other body of any educational institution, who would otherwise by virtue of his membership thereof fall within that definition. (Added 50 of 1987 s. 2)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:
Section:	3	Heading:	Soliciting or accepting an advantage	Version Date: 30/06/1997

PART II

OFFENCES

Any Crown servant who, without the general or special permission of the Governor, solicits or accepts any advantage shall be guilty of an offence.

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:
Section:	4	Heading:	Bribery	Version Date: 30/06/1997

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant' s- (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from

- performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant' s capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his- (Amended 28 of 1980 s. 3)

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant' s capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) If a public servant other than a Crown servant solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section. (Added 28 of 1980 s. 3)

(4) For the purposes of subsection (3) permission shall be in writing and-

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought. (Added 28 of 1980 s. 3)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:
Section:	8	Heading:	Bribery of public servants by persons having dealings with public bodies	Version Date: 30/06/1997

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any Crown servant employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	
Section:	10	Heading:	Possession of unexplained property	Version Date:	30/06/1997

- (1) Any person who, being or having been a Crown servant-
- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
 - (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been in the control of the accused. (Added 9 of 1974 s. 3. Amended 48 of 1996 s. 3)

(3)-(4) (Repealed 56 of 1973 s. 2)

(5) In this section, " official emoluments" 公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	25 of 1998 s. 2
Section:	12	Heading:	Penalty for offences	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable-
- (a) on conviction on indictment-
 - (i) for an offence under section 10, to a fine of \$ 1000000 and to imprisonment for 10 years;
 - (ii) for an offence under section 5 or 6, to a fine of \$ 500000 and to imprisonment for 10 years; and
 - (iii) for any other offence under this Part, to a fine of \$ 500000 and to imprisonment for 7 years; and (Replaced 50 of 1987 s. 3)

(b) on summary conviction-

- (i) for an offence under section 10, to a fine of \$ 500000 and to imprisonment for 3 years; and
- (ii) for any other offence under this Part, to a fine of \$ 100000 and to imprisonment for 3 years, (Replaced 50 of 1987 s. 3)

and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify. (Amended 28 of 1980 s. 5)

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of \$ 100000 and to imprisonment for 1 year, and shall be ordered to pay to the Crown in such manner as the court directs the amount or value of the advantage received by him or such part thereof as the court may specify. (Amended 9 of 1974 s. 4; 28 of 1980 s. 5)

(3) In addition to any penalty imposed under subsection (1), the court may order a person convicted of an offence under section 10(1)(b) to pay to the Crown-

- (a) a sum not exceeding the amount of the pecuniary resources; or
- (b) a sum not exceeding the value of the property,

the acquisition of which by him was not explained to the satisfaction of the court. (Added 9 of 1974 s. 4)

(4) An order under subsection (3) may be enforced in the same manner as a judgment of the High Court in its civil jurisdiction. (Added 9 of 1974 s. 4. Amended 25 of 1998 s. 2)

(5) An order may be made under subsection (3) in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence arose before 15 February 1974. (Added 61 of 1980 s. 2)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	12AA	Heading:	Confiscation of assets	Version Date:	01/07/1997

(1) Subject to this section, where a person is convicted on indictment of an offence under section 10(1)(b) the court may, in addition to any penalty imposed under section 12(1), order the confiscation of any pecuniary resources or property-

- (a) found at the trial to be in his control as provided in section 10; and
- (b) of an amount or value not exceeding the amount or value of pecuniary resources or property the acquisition of which by him was not explained to the satisfaction of the court.

(2) Any application for an order under subsection (1) shall be made by the Secretary for Justice within 28 days after the date of the conviction. (Amended L.N. 362 of 1997)

(3) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to show cause why it should not be made.

(4) An order under subsection (1) shall not be made in respect of pecuniary resources or property held by a person other than the person convicted if that other person satisfies the court in any proceedings to show cause under subsection (3) that he had-

- (a) acted in good faith as regards the circumstances in which the pecuniary resources or property came to be held by him; and
- (b) so acted in relation to the pecuniary resources or property that an order in the circumstances would be unjust.

(5) Nothing in subsection (4) shall be construed as limiting the court' s discretion to decline to make an order under subsection (1) on grounds other than those specified in subsection (4).

(6) An order under subsection (1)-

(a) may be made subject to such conditions as the court thinks fit in all the circumstances of the case; and

(b) may be made in respect of an offence under section 10(1)(b) where the facts that gave rise to that offence occurred before the date of commencement of the Prevention of Bribery (Amendment) Ordinance 1987 (50 of 1987).

(7) A court may make orders under both subsection (1) and section 12(3) in respect of the same offence but shall not make orders under both provisions in respect of the same pecuniary resources or property.

(8) An order under subsection (1) may make provision for taking possession of pecuniary resources or property to which the order applies and for the disposal of such resources or property by or on behalf of the Crown.

(Added 50 of 1987 s. 4)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	L.N. 362 of 1997
Section:	21A	Heading:	Certificate as to official emoluments, etc.	Version Date:	01/07/1997

(1) In any proceedings against a person for an offence under this Ordinance, a certificate purporting- (Amended 50 of 1987 s. 12)

(a) to certify-

(i) the rate of, and the total amount of, official emoluments and the allowances, other than such emoluments, paid to any Crown servant in relation to the discharge by him of his duties as a Crown servant;

(ii) that any person was or was not serving at any specified time or during any specified period as a Crown servant or ceased to be a Crown servant at or before any specified time; or

(iii) that a Crown servant held or did not hold at any specified time any specified office; and

(b) to be signed by the Chief Secretary for Administration,

shall be admitted in such proceedings by any court on its production without further proof.

(2) On the production of a certificate under subsection (1) the court before which it is produced shall, until the contrary is proved, presume-

(a) that the facts stated therein are true; and

(b) that the certificate was signed by the Chief Secretary for Administration.

(3) In this section, " official emoluments" 公職薪俸) includes a pension or gratuity payable under the Pensions Ordinance (Cap 89), the Pension Benefits Ordinance (Cap 99) or the Pension Benefits (Judicial Officers) Ordinance (Cap 401). (Amended 36 of 1987 s. 44; 85 of 1988 s. 51)

(Added 69 of 1978 s. 2. Amended L.N. 362 of 1997)

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Chapter:	201	Title:	PREVENTION OF BRIBERY ORDINANCE	Gazette Number:	L.N. 157 of 1999
Section:	35	Heading:	Amendment of Schedules	Version Date:	17/06/1999

The Governor in Council may by order published in the Gazette amend the Schedules.
(Amended 20 of 1999 s. 5)

Relevant Provisions of the Independent Commission Against Corruption Ordinance (Cap. 204)

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	1	Heading:	Short title	Version Date: 30/06/1997

This Ordinance may be cited as the Independent Commission Against Corruption Ordinance.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	2	Heading:	Interpretation	Version Date: 30/06/1997

In this Ordinance, unless the context otherwise requires-

- " Commission" 廉政公署) means the Independent Commission Against Corruption established under section 3;
- " Commissioner" 廉政專員) means the Commissioner of the Independent Commission Against Corruption appointed under section 5 and the Deputy Commissioner appointed under section 6;
- " Crown servant" 官方僱員) means a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government;
- " officer" 廉署人員) means an officer of the Commission appointed under section 8;
- " public body" 公共機構) has the meaning assigned to it in section 2 of the Prevention of Bribery Ordinance (Cap 201); (Replaced 51 of 1987 s. 2)
- " public servant" 公職人員) has the meaning assigned to it in section 2 of the Prevention of Bribery Ordinance (Cap 201). (Replaced 51 of 1987 s. 2)

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	5	Heading:	Appointment of Commissioner	Version Date: 30/06/1997

(1) The Governor may appoint a Commissioner who, subject to the orders and control of the Governor, shall be responsible for the direction and administration of the Commission.

(2) The Commissioner shall not be subject to the direction or control of any person other than the Governor.

(3) The Commissioner shall be appointed on such terms and conditions as the Governor may think fit.

(4) The Commissioner shall not, while he holds that appointment, discharge the duties of any other office of emolument under the Crown in right of the Government of Hong Kong.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	6	Heading:	Appointment of Deputy Commissioner	Version Date: 30/06/1997

The Governor may appoint a Deputy Commissioner on such terms and conditions as he may think fit.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	7	Heading:	Acting Commissioner	Version Date: 30/06/1997

(1) If the office of the Commissioner is vacant or the Commissioner is absent from duty, the Deputy Commissioner shall, save where the Governor otherwise directs, act as Commissioner.

(2) If both the Commissioner and the Deputy Commissioner are absent from duty, the Governor may appoint another person to act as Commissioner during that absence.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	8	Heading:	Appointment of officers	Version Date: 30/06/1997

(1) The Commissioner may appoint such officers as the Governor thinks necessary to assist the Commissioner in the performance of his functions under this Ordinance.

(2) (a) Subject to paragraph (b), the Commissioner may, if he is satisfied that it is in the interests

of the Commission to do so, after consulting the Advisory Committee on Corruption, terminate the appointment of an officer.

- (b) Before terminating an appointment under this subsection-
 - (i) the Commissioner shall by notice in writing inform the officer concerned that the termination of his appointment is under consideration and the reasons therefor; and
 - (ii) in the notice such officer shall be given a period of not less than 7 days within which to make, and is hereby authorized to make if he so wishes, written representations to the Commissioner as regards such reasons or as to why his appointment should not be terminated or as regards both.
- (c) Where an appointment is terminated under this subsection-
 - (i) the Commissioner shall notify the officer in writing of the termination; and
 - (ii) the officer may, within the period of 21 days beginning on the date of the notification under subparagraph (i), appeal to the Governor against the termination.
- (d) On an appeal under paragraph (c) the Governor may confirm or set aside the termination.
- (e) Where an appointment is terminated under subsection (2)(a), the termination shall operate forthwith but if on an appeal under paragraph (c)(ii) the termination is set aside, the officer concerned shall be treated in all respects as if the Commissioner had not terminated his appointment. (Replaced 48 of 1996 s. 19)

(3) The terms and conditions of employment of officers shall be subject to the approval of the Governor, who may vary any terms or conditions imposed by virtue of subsection (4).

(4) Subject to this section and section 11(2), the Commissioner and officers shall be employed subject to Colonial Regulations, Government regulations and such administrative rules as apply generally to public officers, except insofar as the application of such Colonial Regulations, Government regulations or rules may be modified by standing orders made under section 11(2).

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	10	Heading:	Power of arrest	Version Date:	03/03/2000

(1) An officer authorized in that behalf by the Commissioner may without warrant arrest a person if he reasonably suspects that such person is guilty of an offence under this Ordinance or the Prevention of Bribery Ordinance (Cap 201) or the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554) or, being a Crown servant, is guilty of an offence of blackmail committed by or through the misuse of office. (Amended 27 of 1980 s. 2; 10 of 2000 s. 47)

(2) Where, during an investigation by the Commission of a suspected offence under the Prevention of Bribery Ordinance (Cap 201) or of a suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), another offence is disclosed, any such officer may without warrant arrest a person if he reasonably suspects that such person is guilty of that other offence and- (Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

- (a) he reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by, the suspected offence under the Prevention of Bribery Ordinance (Cap 201) or the suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), as the case may be; or (Amended 16 of 1991 s. 2; 10 of 2000 s. 47)

- (b) the other offence is one which is specified for the purposes of this subsection in subsection (5).
- (3) Any such officer-
 - (a) may use such force as is reasonable in the circumstances in effecting an arrest under subsection (1) or (2); and (Amended 18 of 1976 s. 2)
 - (b) may, for the purpose of effecting such an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be so arrested.
- (4) No premises or place shall be entered under subsection (3) unless the officer has first stated that he is an officer and the purpose for which he seeks entry and produced his warrant card to any person requesting its production, but subject as aforesaid any such officer may enter any such premises or place by force, if necessary.
- (5) The following offences are specified for the purposes of subsection (2)-
 - (a) the offence of perverting or obstructing the course of justice;
 - (aa) the offence of theft under section 9 of the Theft Ordinance (Cap 210); (Added 27 of 1980 s. 2)
 - (b) the offence of blackmail under section 23 of the Theft Ordinance (Cap 210);
 - (ba) the offence of fraud under section 16A of the Theft Ordinance (Cap 210); (Added 45 of 1999 s. 5)
 - (c) the offence of obtaining property by deception under section 17 of the Theft Ordinance (Cap 210);
 - (d) the offence of obtaining pecuniary advantage by deception under section 18 of the Theft Ordinance (Cap 210);
 - (da) the offence of obtaining services by deception under section 18A of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)
 - (db) the offence of evading liability by deception under section 18B of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)
 - (dc) the offence of making off without payment under section 18C of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)
 - (dd) the offence of procuring a false entry in certain records under section 18D of the Theft Ordinance (Cap 210); (Added 51 of 1987 s. 4)
 - (de) the offence of false accounting under section 19 of the Theft Ordinance (Cap 210); (Added 27 of 1980 s. 2. Amended 51 of 1987 s. 4)
 - (e) the offence of assisting an offender under section 90 of the Criminal Procedure Ordinance (Cap 221);
 - (ea) any offence under regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); (Replaced 134 of 1997 s. 85)
 - (f) the offence of conspiracy to defraud and the offence of conspiracy to commit any of the offences referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e) or (ea); (Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5)
 - (g) an attempt to commit any offence referred to in paragraph (a), (aa), (b), (ba), (c), (d), (da), (db), (dc), (dd), (de), (e) or (ea) or the offence of aiding, abetting, counselling or procuring any offence so referred to. (Replaced 27 of 1980 s. 2. Amended 51 of 1987 s. 4; 16 of 1991 s. 2; 45 of 1999 s. 5)

(Replaced 14 of 1976 s. 2)

Chapter: 204 Title: INDEPENDENT Gazette
COMMISSION AGAINST Number:
CORRUPTION
ORDINANCE
Section: 10A Heading: Procedure after arrest Version Date: 30/06/1997

- (1) A person arrested under section 10-
 - (a) may be taken forthwith to a police station and there dealt with in accordance with the Police Force Ordinance (Cap 232); or
 - (b) may be taken to the offices of the Commission.
- (2) A person arrested under section 10 who is taken to the offices of the Commission may be-
 - (a) detained there if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary for the purpose of further inquiries;
 - (b) released from custody-
 - (i) on his depositing such reasonable sum of money as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
 - (ii) on his entering into such recognizance, with such sureties, if any, as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
 - (iii) on his depositing such a sum of money and entering into such a recognizance.
- (3) A person who has deposited a sum of money for the purposes of subsection (2) and has thereupon been released from custody shall-
 - (a) attend at the offices of the Commission at such time as an officer of the rank of Senior Commission Against Corruption Officer or above has specified and, having so attended, shall further attend at such other times thereafter as such an officer may specify; or (Amended 48 of 1996 s. 20)
 - (b) appear before a magistrate at such time and place as an officer of the rank of Senior Commission Against Corruption Officer or above has specified.
- (3A) A person who has been released from custody under subsection (3) and-
 - (a) who attends at the offices of the Commission at a further time as shall have been specified; and
 - (b) who on such attendance advises an officer of the rank of Senior Commission Against Corruption Officer or above that he will refuse to attend at any further time, whether specified or not,shall have the sum of money deposited for the purposes of subsection (2) refunded to him and shall not be bound by any recognizance entered into by him with respect to his attendance. (Added 48 of 1996 s. 20)
- (4) A recognizance entered into for the purposes of subsection (2) shall be conditioned-
 - (a) for the attendance of the person at the offices of the Commission at such time as may be specified therein and at such other time thereafter as an officer of the rank of Senior Commission Against Corruption Officer or above may specify; or
 - (b) for the appearance of the person before a magistrate at such time and place as may be specified therein.
- (5) If any person fails to attend at the offices of the Commission or to appear before a magistrate in accordance with subsection (3) or a recognizance entered into for the purposes of subsection (2), such sum of money may be forfeited or such recognizance estreated by a magistrate on application by the Commissioner.
- (6) A person who is detained at the offices of the Commission under subsection (2)(a) shall be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest unless he is sooner released, whether under subsection (2)(b) or otherwise.
- (7) (a) A person who is detained at the offices of the Commission under subsection (2)(a) may be

taken in the custody of an officer to and from any other place if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary or desirable to do so.

(b) Any person who is being taken to and from any such place in the custody of an officer under paragraph (a) shall be deemed to be in lawful custody.

(8) The Governor may by order make such provision as he considers necessary with respect to the treatment of persons detained at the offices of the Commission, whether under subsection (2)(a) or pursuant to the order of a magistrate under section 20(3) or 79(1) of the Magistrates Ordinance (Cap 227). (Amended 51 of 1987 s. 5)

(Added 14 of 1976 s. 2. Amended 27 of 1980 s.3)

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:	
Section:	11	Heading:	Standing orders	Version Date:	30/06/1997

(1) The Commissioner may make orders, which shall be known as Commission standing orders, providing for-

- (a) the control, direction and administration of the Commission;
- (b) the discipline, training, classification and promotion of officers;
- (c) the duties of officers;
- (d) the financial regulation of the Commission;
- (e) such other matters as may, in his opinion, be necessary or expedient for preventing abuse or neglect of duty and for upholding the integrity of the Commission.

(2) The Commissioner may, with the prior approval of the Governor, by standing order modify the application to officers of Colonial Regulations, Government regulations or administrative rules applicable by virtue of section 8(4).

(3) No Commission standing order shall be inconsistent with any of the provisions of this Ordinance.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	12	Heading:	Duties of the Commissioner	Version Date:	03/03/2000

It shall be the duty of the Commissioner, on behalf of the Governor, to-

- (a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;
- (b) investigate-

- (i) any alleged or suspected offence under this Ordinance;
 - (ii) any alleged or suspected offence under the Prevention of Bribery Ordinance (Cap 201);
 - (iii) any alleged or suspected offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); (Amended 10 of 2000 s. 47)
 - (iv) any alleged or suspected offence of blackmail committed by a Crown servant by or through the misuse of his office;
 - (v) any alleged or suspected conspiracy to commit an offence under the Prevention of Bribery Ordinance (Cap 201);
 - (vi) any alleged or suspected conspiracy to commit an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); and (Amended 10 of 2000 s. 47)
 - (vii) any alleged or suspected conspiracy (by 2 or more persons including a Crown servant) to commit an offence of blackmail by or through the misuse of the office of that Crown servant; (Replaced 16 of 1991 s. 3)
- (c) investigate any conduct of a Crown servant which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the Governor;
 - (d) examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;
 - (e) instruct, advise and assist any person, on the latter' s request, on ways in which corrupt practices may be eliminated by such person;
 - (f) advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (g) educate the public against the evils of corruption; and
 - (h) enlist and foster public support in combatting corruption.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	13	Heading:	Powers of the Commissioner	Version Date:	03/03/2000

- (1) For the purpose of the performance of his functions under this Ordinance the Commissioner may-
- (a) authorize in writing any officer to conduct an inquiry or examination;
 - (b) enter any Government premises and require any Crown servant to answer questions concerning the duties of any Crown or public servant and require the production of any standing orders, directions, office manuals or instructions relating thereto;
 - (c) (Repealed 45 of 1992 s. 3)
 - (d) authorize in writing any person to perform any of his duties and to exercise such powers under this Ordinance and the Prevention of Bribery Ordinance (Cap 201) as he may

specify. (Amended 10 of 2000 s. 47)

(2) The Commissioner or any officer authorized for the purposes of this subsection in writing by the Commissioner shall have the following powers, namely-

- (a) as regards the performance of any of the Commissioner' s functions under this Ordinance, access to all records, books and other documents relating to the work of any Government department in the possession or under the control of any Crown servant;
- (b) in so far as is necessary for the performance of any of the Commissioner' s functions under section 12(d) or (f), access to such records, books and other documents in the possession or under the control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of that public body;
- (c) as regards any such records, books and other documents, power to photograph or make copies of them. (Replaced 48 of 1996 s. 23)

(3) In this section " documents" 文件) has the meaning assigned to " document" in section 2 of the Prevention of Bribery Ordinance (Cap 201). (Added 48 of 1996 s. 23)

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	14	Heading:	Estimates	Version Date: 30/06/1997

(1) In each financial year, before a date appointed by the Governor, the Commissioner shall forward to the Governor, for his approval, estimates of the expenditure of the Commission for the next financial year.

(2) The estimates shall be in such form and contain such information as the Governor may require.

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:
Section:	15	Heading:	Accounts	Version Date: 30/06/1997

(1) The Commissioner shall maintain proper accounts of such expenditure by the Commission as the Governor may require.

(2) As soon as may be convenient after the end of each financial year, the Commissioner shall cause a statement of accounts during the previous financial year to be prepared.

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Chapter: 204 Title: INDEPENDENT Gazette
COMMISSION AGAINST Number:
CORRUPTION
ORDINANCE
Section: 16 Heading: **Audit** Version Date: 30/06/1997

(1) The Director of Audit shall at any time be entitled to have access to all accounts maintained under section 15(1) and he may require such information and explanation thereon as he thinks fit.

(2) The Director of Audit shall audit the statement of accounts prepared under section 15(2) and report thereon to the Governor.

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Chapter: 204 Title: INDEPENDENT Gazette
COMMISSION AGAINST Number:
CORRUPTION
ORDINANCE
Section: 17 Heading: **Annual report** Version Date: 30/06/1997

(1) The Commissioner shall, on or before 31 March in each year, or by such later date as the Governor may allow, submit to the Governor a report on the activities of the Commission in the previous year.

(2) The Governor shall cause the report to be laid on the table of the Legislative Council.

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Chapter: 204 Title: INDEPENDENT Gazette
COMMISSION AGAINST Number:
CORRUPTION
ORDINANCE
Section: 17A Heading: **Welfare fund** Version Date: 30/06/1997

(1) There shall be established a fund to be known as the " Independent Commission Against Corruption Welfare Fund" .

(2) The fund shall consist of-

- (a) such donations and voluntary contributions as may be made thereto;
- (b) such sums as may, from time to time, be voted thereto by the Legislative Council; and
- (c) such sums as may accrue by way of dividend or interest from the investment of the fund or any part thereof.

(3) The fund shall be controlled by the Commissioner and applied to the following purposes-

- (a) procuring for officers of the Commission and other persons employed by the Commission or for former officers or persons so employed who have ceased employment or retired on pension, gratuity or other allowance, comforts, conveniences or other benefits not chargeable to the general revenue;

- (b) granting loans to officers of the Commission and other persons employed by the Commission or former officers of the Commission and other persons formerly employed by the Commission who have ceased to be employed or retired on pension, gratuity or other allowance;
- (c) making grants to persons who were wholly or partially dependent at the time of his death on-
 - (i) a deceased officer or a deceased former officer of the Commission who had ceased to be employed or had retired on pension, gratuity or other allowance; or
 - (ii) a deceased person employed by the Commission or a deceased person who was at any time employed by the Commission and who had ceased to be employed or had retired on pension, gratuity or other allowance,

and who are in need of financial assistance, whether towards the payment of funeral expenses of the deceased or otherwise.

(Added 27 of 1980 s. 7)

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Chapter:	204	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE	Gazette Number:	
Section:	18A	Heading:	Investigation of pre-1977 offences	Version Date:	30/06/1997

(1) Notwithstanding section 12, the Commissioner shall not act as required by paragraphs (a), (b) and (c) of that section in respect of alleged or suspected offences committed before 1 January 1977 except in relation to-

- (a) persons not in Hong Kong or against whom a warrant of arrest was outstanding on 5 November 1977;
- (b) any person who before 5 November 1977 had been interviewed by an officer and to whom allegations had been put that he had committed an offence;
- (c) an offence which the Governor considers sufficiently heinous to warrant action.

(2) A certificate under the hand of the Chief Secretary stating the fact that the Governor considers an offence sufficiently heinous to warrant action shall be conclusive evidence of that fact.

(Added 9 of 1978 s. 2)

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Chapter:	204A	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION (TREATMENT OF DETAINED PERSONS) ORDER	Gazette Number:	
Paragraph:	1	Heading:	Citation	Version Date:	30/06/1997

This order may be cited as the Independent Commission Against Corruption (Treatment of Detained Persons) Order.

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Chapter:	204A	Title:	INDEPENDENT COMMISSION AGAINST CORRUPTION (TREATMENT OF DETAINED PERSONS) ORDER	Gazette Number:
Paragraph:	18	Heading:	Visits by justices	Version Date: 30/06/1997

(1) The Commission shall provide facilities to justices of the peace appointed by the Governor for that purpose (in this paragraph referred to as visiting justices) to enable them to visit detainees and satisfy themselves that detainees are held in accordance with this order and any other law.

(2) For the purposes of sub-paragraph (1) visiting justices shall be permitted to visit detainees at all reasonable times and for reasonable periods.

(3) A record of such a visit shall be made in the arrest/detention sheet of every detainee.

(4) There shall be kept at the offices of the Commission a book to be known as the Visiting Justices Report Book, in which visiting justices shall record their visits and their observations and comments.

(5) Any adverse observation or comment recorded in the Visiting Justices Report Book shall as soon as practicable be brought to the attention of the Commissioner or Deputy Commissioner.

Relevant Provisions of Other Ordinance amended by the Bill

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Chapter:	93	Title:	PUBLIC SERVICE COMMISSION ORDINANCE	Gazette Number:	
Schedule:	1	Heading:	SPECIFIED OFFICES	Version Date:	30/06/1997

[section 6(2)(e) & (3)]

The Director of Audit.

The Commissioner of the Independent Commission Against Corruption.

The Deputy Commissioner of the Independent Commission Against Corruption.

A person appointed under section 8 of the Independent Commission Against Corruption Ordinance (Cap 204).

(Added 68 of 1975 s. 4)

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Chapter:	122	Title:	AUDIT ORDINANCE	Gazette Number:	L.N. 64 of 2001
Schedule:	1	Heading:	ACCOUNTS AND FUNDS SUBJECT TO AUDIT BY THE DIRECTOR	Version Date:	09/03/2001

[sections 2, 8(1) & (2), 9(1),
13(1) & 18(1)]

Item	Accounts/Funds	Responsible public officer	Statutory provisions under which the account or fund is kept or operated or in which the account or fund is referred to
1.	High Court Suitors' Funds	Registrar of the High Court	Rule 4 of the High Court Suitors' Funds Rules (Cap 4 sub. leg.).
2.	Official Receiver in Bankruptcy Account	Official Receiver	Section 91(1) of the Bankruptcy Ordinance (Cap 6).
3.	Bankruptcy Estate Account	Official Receiver	Section 128 of the Bankruptcy Ordinance (Cap 6).
4.	Official Administrator' s Account	Registrar of the High Court in his capacity as the Official Administrator	Section 23A(1) of the Probate and Administration Ordinance (Cap 10).
5.	Labour Tribunal Suitors' Funds	Registrar of the Labour Tribunal	Rule 5 of the Labour Tribunal (Suitors' Funds) Rules (Cap 25 sub. leg.).
6.	Companies Liquidation Account	Official Receiver	Section 293(1) of the Companies Ordinance (Cap 32).
7.	Independent Commission Against Corruption Welfare Fund	Commissioner of the Independent Commission Against Corruption	Section 17A of the Independent Commission Against Corruption Ordinance (Cap 204).
8.	District Court Suitors' Funds	Registrar of the District Court	Rule 4 of the District Court Suitors' Funds Rules (Cap 336 sub. leg.).
9.	Small Claims Tribunal Suitors' Funds	Registrar of the District Court	Rule 5 of the Small Claims Tribunal (Suitors' Funds) Rules (Cap 338 sub. leg.).
10.	Minor Employment Claims Adjudication Board Suitors' Funds	Registrar of the Minor Employment Claims Adjudication Board	Rule 8 of the Minor Employment Claims Adjudication Board (Suitors' Funds) Rules (Cap 453 sub. leg.).
11.	Master in Lunacy Account	Registrar of the High Court in his capacity as the Master in Lunacy	Not applicable.
12.	World Refugee Year Loan Fund	Director of Agriculture and Fisheries	Not applicable.
13.	Official Receiver in Voluntary Arrangement Account	Official Receiver	Sections 2 (definition of "nominee") and 20H(1)(a)(ii) of the Bankruptcy Ordinance (Cap 6) and rules 122C(2)(i) and 122D(3) and (4) of the Bankruptcy Rules (Cap 6 sub. leg.). (Added L.N. 64 of

2001)

(Schedule 1 added 32 of 2000 s. 22)

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Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	L.N. 70 of 1999
Section:	120	Heading:	Official secrecy	Version Date:	03/08/1999

Remarks:

Adaptation amendments retroactively made - see 68 of 1999 s. 3

(1) Except as may be necessary for the exercise of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies- (Amended 64 of 1987 s. 26)

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to his knowledge in the exercise of any function under this Ordinance;
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
- (c) shall not suffer or permit any person to have access to any records in the possession, custody or control of any person to whom this subsection applies.

(2) Subsection (1) shall apply to any person who is or has been-

- (a) a public officer;
- (b) a person authorized by the Monetary Authority;
- (c) the Advisor of an authorized institution; (Replaced 49 of 1995 s. 36)
- (d) the Manager of an authorized institution; (Replaced 49 of 1995 s. 36)
- (da) a person appointed under section 53G(5); (Added 49 of 1995 s. 36)
- (e) a person appointed under section 117(2); and
- (f) a person employed by or assisting a person to whom this subsection applies by virtue of paragraph (b), (c), (d), or (e),

who exercises or has exercised any function under this Ordinance.

(3) Subsection (1) shall not apply if the Manager of an authorized institution is required to comply with a notice to furnish returns and information under section 51 of the Inland Revenue Ordinance (Cap 112). (Replaced 49 of 1995 s. 36)

(4) No person who exercises any function in the course of an examination or investigation under section 47, 50, 55 or 117 or who receives reports, returns or information submitted under section 47, 50, 55, 56, 59, 63 or 64 shall be required to produce in any court any book, account or other document whatsoever or to divulge or communicate to any court any matter or thing coming under his notice in the exercise of his functions under this Ordinance, except as may be necessary in the course of a prosecution for any offence or of a winding-up by the Court of First Instance under section 122. (Amended 67 of 1992 s. 9; 25 of 1998 s. 2)

(5) Subsection (1) shall not apply-

- (a) to the disclosure of information in the form of a summary of similar information provided by a number of authorized institutions if the summary is so framed as to prevent particulars relating to the business of any particular authorized institution being

- ascertained from it;
- (b) to the disclosure of information with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Ordinance or otherwise;
 - (c) in connection with any other legal proceedings arising out of this Ordinance;
 - (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint; (Amended L.N. 362 of 1997)
 - (e) to the disclosure of information by the Monetary Authority with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by an auditor or former auditor of an authorized institution or former authorized institution, whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63; (Replaced 43 of 1990 s. 9. Amended 67 of 1992 s. 9)
 - (f) to the disclosure of information by the Monetary Authority to the Chief Executive, the Financial Secretary, the Secretary for Financial Services, an inspector appointed by the Financial Secretary to investigate the affairs of a company, a person holding an authorized statutory office or any public officer authorized by the Financial Secretary for the purposes of this paragraph where, in the opinion of the Monetary Authority- (Amended L.N. 96 of 1993; 68 of 1999 s. 3)
 - (i) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or
 - (ii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed; (Replaced 95 of 1991 s. 40)
 - (g) to the disclosure of information by the Monetary Authority to an auditor of an authorized institution or former authorized institution, or to a former auditor, for the purpose of enabling or assisting the Monetary Authority to discharge his functions under this Ordinance; (Replaced 43 of 1990 s. 9. Amended L.N. 276 of 1990; 95 of 1991 s. 40)
 - (ga) to the disclosure of information-
 - (i) to any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66); and
 - (ii) where such disclosure will enable or assist such person to assist the Monetary Authority in the performance of any of the functions referred to in that section; (Added 49 of 1995 s. 36)
 - (h) subject to subsection (5D), to the disclosure of information by the Monetary Authority with the consent of-
 - (i) the person from whom the information was obtained or received; and
 - (ii) where the information does not relate to such person, the person to whom it relates; or (Added 95 of 1991 s. 40)
 - (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section or section 121. (Added 95 of 1991 s. 40)
- (5A) For the purposes of subsection (5)(f), " authorized statutory office" 認可法定職位) means-
- (a) the Insurance Authority under the Insurance Companies Ordinance (Cap 41); (Amended 10 of 1989 s. 65)
 - (b) the Securities and Futures Commission; or (Replaced 10 of 1989 s. 65)
 - (c) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap 485). (Added 4 of 1998 s. 7)
 - (d) (Repealed 10 of 1989 s. 65)
- (Added 68 of 1988 s. 2. Amended 4 of 1998 s. 7)

(5B) The Legislative Council may, by resolution, amend subsection (5A). (Added 68 of 1988 s. 2)

(5C) The Monetary Authority may attach a condition to any disclosure of information made pursuant to subsection (5)(b), (c), (d), (e), (f) or (ga) and shall attach a condition to any disclosure of information made pursuant to subsection (5)(g), that neither- (Amended 49 of 1995 s. 36)

(a) the person to whom the information has been disclosed; nor

(b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Monetary Authority. (Added 95 of 1991 s. 40)

(5D) Subsection (5)(h) shall not operate to require the Monetary Authority to disclose in or in relation to any civil proceedings any information which he may disclose, or has disclosed, pursuant to that subsection. (Added 95 of 1991 s. 40. Amended 94 of 1993 s. 28)

(6) Any person who-

(a) contravenes subsection (1);

(b) aids, abets, counsels or procures any person to contravene subsection (1); or

(c) knowing that the condition referred to in subsection (5C) has been attached to a disclosure of information made pursuant to subsection (5), contravenes, or aids, abets, counsels or procures any person to contravene, that condition, (Added 95 of 1991 s. 40)

commits an offence and is liable-

(i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

(7) Subsection (5)(a), (e) and (g) shall apply to and in relation to approved money brokers and former approved money brokers as it applies to and in relation to authorized institutions and former authorized institutions respectively, and the other provisions of this Ordinance shall be construed accordingly. (Added 4 of 1997 s. 17)

(Amended 3 of 1990 s. 46; 82 of 1992 s. 20)

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Chapter:	232	Title:	POLICE FORCE ORDINANCE	Gazette Number:	L.N. 100 of 2001
Section:	3	Heading:	Interpretation	Version Date:	01/07/2001

In this Ordinance, unless the context otherwise requires-

" appropriate consent" 適當的同意) means-

(a) in relation to a person who has attained the age of 18 years, the consent of that person;

(b) in relation to a person who has not attained the age of 18 years, the consent both of that person and of his parent or guardian; (Added 68 of 2000 s. 5)

" auxiliary force" 輔警隊) means the Hong Kong Auxiliary Police Force established under the Royal Hong Kong Auxiliary Police Force Ordinance (Cap 233); (Added 58 of 1999 s. 3)

" auxiliary officer" 輔警人員) means a member of the auxiliary force; (Added 58 of 1999 s. 3)

" Commissioner" 處長) means the Commissioner of Police of Hong Kong or a deputy commissioner; (Replaced 13 of 1953 s. 2. Amended 76 of 1999 s. 3)

" DNA" means deoxyribonucleic acid; (Added 68 of 2000 s. 5)

- " DNA information" DNA 資料) means genetic information derived from the forensic DNA analysis of an intimate sample or a non-intimate sample; (Added 68 of 2000 s. 5)
- " gazetted police officer" 憲委級警務人員) includes officers of all ranks from and including the Commissioner down to and including superintendent; (Amended 37 of 1974 s. 2)
- " government regulations" 政府規例) means the administrative rules known as the Government Regulations and any other administrative rules or instruments regulating the public service; (Added 76 of 1999 s. 3)
- " Independent Commission Against Corruption" 總督特派廉政專員公署) means the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap 204); (Added 68 of 2000 s. 5)
- " inspector" 督察) means an inspector of police of whatever grade or rank;
- " intimate sample" 體內樣本) means-
- (a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;
 - (b) a dental impression;
 - (c) a swab taken from a private part of a person' s body or from a person' s body orifice other than the mouth; (Added 68 of 2000 s. 5)
- " non-commissioned officer" 非委任級人員) means a police officer below the rank of inspector down to and including sergeant and also means detectives of corresponding ranks; (Amended 42 of 1977 s. 2)
- " non-intimate sample" 非體內樣本) means-
- (a) a sample of head hair;
 - (b) a sample taken from a nail or from under a nail;
 - (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;
 - (d) saliva;
 - (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); (Added 68 of 2000 s. 5)
- " police constable" or " constable" 警員) means a police officer under the rank of sergeant and also means detective police constable or detective constable; (Amended 42 of 1977 s. 2)
- " police officer" 警務人員) includes any member of the police force; (Amended 37 of 1974 s. 2; 58 of 1999 s. 3)
- " police regulations" 警察規例) means regulations made in exercise of the powers conferred by section 45 and any regulations continued or continuing in force upon the enactment of this Ordinance;
- " Police Welfare Fund" 警察福利基金) means the Police Welfare Fund continued by section 39B; (Replaced 58 of 1999 s. 3)
- " private part" 私處) in relation to a person' s body, means the genital or anal area and includes the breasts in the case of a woman; (Added 68 of 2000 s. 5)
- " Public Service (Administration) Order" 《公務人員(管理)命令》) means-
- (a) the Public Service (Administration) Order 1997 (Executive Order No. 1 of 1997);
 - (b) the Public Service (Disciplinary) Regulation made under section 21 of that Order (and together with that Order published as S.S. No. 5 to Gazette No. 2/1997); and
 - (c) any other regulation made or any direction given under that Order, as amended from time to time; (Added 76 of 1999 s. 3)
- " registered dentist" 註冊牙醫) has the same meaning as it has in the Dentist Registration Ordinance (Cap 156); (Added 68 of 2000 s. 5)
- " 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 2. (Added 68 of 2000 s. 5)
(Amended 29 of 1950 s. 2; 42 of 1977 s. 2; 58 of 1999 s. 3)

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Chapter:	232	Title:	POLICE FORCE ORDINANCE	Gazette Number:	L.N. 100 of 2001
Section:	59E	Heading:	Non-intimate samples of swabs from the mouths of convicted persons	Version Date:	01/07/2001

- (1) Where a person-
- (a) has been convicted of a serious arrestable offence on or after the commencement of this section; and
 - (b) either-
 - (i) has not had an intimate sample or a non-intimate sample taken from him before the conviction; or
 - (ii) has had an intimate sample or a non-intimate sample taken from him before the conviction but the sample was destroyed under section 59H(1) or (4) or section 10G(1) or (4) of the Independent Commission Against Corruption Ordinance (Cap 204),

then a police officer of the rank of superintendent or above may authorize the taking of a non-intimate sample of a swab from the mouth of the person for the purposes of section 59G(1) and (2).

(2) Where an authorization has been given under subsection (1), a police officer shall, before the taking of a non-intimate sample of a swab from the mouth, inform the person from whom the sample is to be taken-

- (a) of the giving of the authorization;
- (b) of the grounds for giving it;
- (c) that any DNA information derived from the sample may be permanently stored in the DNA database maintained under section 59G(1) and may be used for the purposes specified in subsection (2) of that section; and
- (d) that the person may make a request to a police officer for access to the DNA information derived from the sample.

(3) A non-intimate sample of a swab from the mouth of a person may only be taken by a police officer who has received training for the purpose.

(4) A police officer may use such force as is reasonably necessary for the purposes of taking or assisting the taking of a non-intimate sample of a swab from the mouth of a person pursuant to this section.

(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.

(Added 68 of 2000 s. 7)

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Chapter:	232	Title:	POLICE FORCE ORDINANCE	Gazette Number:	L.N. 100 of 2001
Section:	59G	Heading:	DNA database	Version Date:	01/07/2001

(1) There shall be maintained (whether in computerized form or otherwise), by the Government Chemist on behalf of the Commissioner, a DNA database storing DNA information derived from an intimate sample or a non-intimate sample taken from a person pursuant to-

- (a) section 59A or 59C if the person has been subsequently convicted of any serious arrestable offence;
 - (b) section 10E of the Independent Commission Against Corruption Ordinance (Cap 204) if the person has been subsequently convicted of any serious arrestable offence;
 - (c) section 59E; or
 - (d) section 59F.
- (2) No person shall-

- (a) have access to any information stored in the DNA database; or
- (b) disclose or use any such information,

except to the extent necessary for the purposes of-

- (i) forensic comparison with any other DNA information in the course of an investigation of any offence by a police officer or an officer of the Independent Commission Against Corruption;
- (ii) producing evidence in respect of the DNA information in any proceedings for any such offence;
- (iii) making the information available to the person to whom the information relates;
- (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).

(3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(Added 68 of 2000 s. 7)

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Chapter:	234A	Title:	PRISON RULES	Gazette Number:	8 of 1999; L.N. 320 of 1999
Rule:	1A	Heading:	Interpretation	Version Date:	01/01/2000

In these rules, unless the context otherwise requires-

" Medical Officer" (醫生) means a medical officer appointed under section 3 of the Ordinance;

" specified person" (指明的人) means-

- (a) the Chief Executive; (15 of 1999 s. 3)
- (b) a member of the Executive Council;
- (c) a member of the Legislative Council;
- (d)-(e) (Repealed 78 of 1999 s. 7)
- (f) a member of a District Council; (8 of 1999 s. 89)
- (g) a visiting justice;
- (h) The Ombudsman appointed under section 3 of The Ombudsman Ordinance (Cap 397); or
- (i) the Commissioner of the Independent Commission Against Corruption appointed under section 5 of the Independent Commission Against Corruption Ordinance (Cap 204); (L.N. 275 of 1997)

"visiting justice"(巡獄太平紳士) means a justice of the peace for the time being appointed by the Chief Executive under section 23 of the Ordinance. (L.N. 275 of 1997; 15 of 1999 s. 3)
(L.N. 2 of 1974; L.N. 154 of 1977)

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Chapter:	245	Title:	PUBLIC ORDER ORDINANCE	Gazette Number:	L.N. 362 of 1997; 76 of 1999
Section:	17C	Heading:	Prohibition of offensive weapons at public meetings and processions	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 76 of 1999 s. 3

(1) Any person who, while present at any public meeting or on the occasion of any public procession, has with him any offensive weapon, without lawful authority or reasonable excuse, shall be guilty of an offence and shall be liable on conviction to a fine of \$ 5000 and to imprisonment for 2 years.

(2) For the purposes of this section, a person shall not be deemed to be acting in pursuance of lawful authority unless he is on duty as-

- (a) a police officer;
- (b) a member of the Hong Kong Auxiliary Police Force when the Force or the part of the Force to which such member belongs, or such member, has been called out under section 16(1) or (2) of the Hong Kong Auxiliary Police Force Ordinance (Cap 233); (Amended L.N. 362 of 1997; 76 of 1999 s. 3)
- (c) a member of the Fire Services Department;
- (d) a public officer;
- (e) a member of Her Majesty' s forces;
- (f) (Repealed 20 of 1997 s. 25);
- (g) a member of the Government Flying Service; or (Replaced 54 of 1992 s. 19)
- (h) an officer of the Independent Commission Against Corruption established under the Independent Commission Against Corruption Ordinance (Cap 204).

(3) Where any person is convicted of an offence under subsection (1), the court may make an order for the forfeiture of any offensive weapon in respect of which the offence was committed.

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Chapter:	265B	Title:	PEAK TRAMWAY BY-LAWS	Gazette Number:	
Bylaw:	25	Heading:	Firearms	Version Date:	30/06/1997

PART V

FIREARMS AND DANGEROUS SUBSTANCES

No person not being a member of Her Majesty' s forces, a police officer, a member of the Customs and Excise Service or an officer of the Independent Commission against Corruption shall carry or have with him any firearms or ammunition on any part of the premises.

(Enacted 1989)

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Chapter:	372B	Title:	KOWLOON-CANTON RAILWAY CORPORATION BY-LAWS	Gazette Number:	
Bylaw:	96	Heading:	Exemption for Government officers	Version Date:	30/06/1997

By-law 80 shall not apply to a police officer, an immigration officer or immigration assistant, an officer of the Fire Services Department, a member of Her Majesty' s Forces, a member of the Customs and Excise Service within the meaning of the Customs and Excise Service Ordinance (Cap 342), the Commissioner, the Deputy Commissioner or an officer of the Independent Commission Against Corruption who requires access to the railway premises or any part thereof for the performance of his duty in circumstances of such urgency that the performance of his duty might be frustrated or seriously impaired if such by-law was to apply to him.

(Enacted 1985)

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Chapter:	374	Title:	ROAD TRAFFIC ORDINANCE	Gazette Number:	L.N. 146 of 1998
Schedule:	8	Heading:	REQUIREMENTS APPLICABLE TO CAR TESTING CENTRES	Version Date:	27/02/1998

[sections 88C, 88D, 88F & 88H]

1. A car testing centre shall be equipped, staffed, operated and maintained, and examinations of private cars and light goods vehicles shall be conducted, in accordance with the code of practice issued and from time to time revised by the Commissioner under section 88F(1)(a). (Amended L.N. 207 of 1990)
2. Examinations of private cars and light goods vehicles at the car testing centre shall be carried out only by an approved car tester, and under the general supervision of a responsible person. (Amended L.N. 207 of 1990)
3. Notice shall be given by the proprietor to the Commissioner forthwith of any change-
 - (a) of an approved car tester employed at the car testing centre;
 - (b) of a responsible person employed at the car testing centre; and
 - (c) in the ownership of the car testing centre, or the financial status of the proprietor, or any other matter specified by the Commissioner.
4. Subject to any practice laid down in the code of practice, the car testing centre shall examine any private car or light goods vehicle produced to it for examination for the purposes of Part IXA of the Ordinance. (Amended L.N. 207 of 1990)
5. Notices in a form approved by the Commissioner shall be prominently displayed at the car testing centre indicating and stating-
 - (a) that the place is a car testing centre;
 - (b) the hours that the car testing centre is open for business;
 - (c) the names of the approved car testers, and of the responsible person at the car testing centre;
 - (d) the fees that are charged at the car testing centre;
 - (e) the addresses of other car testing centres within Hong Kong;
 - (f) the circumstances under which the issue of a certificate of roadworthiness may be refused;
 - (g) the procedure that may be followed upon a refusal to issue a certificate of road worthiness; and
 - (h) a warning against the commission of offences under the Prevention of Bribery Ordinance (Cap 201) and the Independent Commission Against Corruption Ordinance (Cap 204). (Amended 71 of 1991 s. 7)

6.		Fees
	(a) Fee payable for designation or renewal of designation of a place as a car testing centre. (Amended L.N. 529 of 1996; L.N. 35 of 1998; L.N. 146 of 1998)	\$ 12100
	(b) Fees to be charged in respect of an examination-	
	(i) Initial examination-	
	(A) Private car	\$ 530
	(B) Light goods vehicle	\$ 630
	(ii) Re-examination where made within 14 days of initial examination-	
	(A) Private car	\$ 165
	(B) Light goods vehicle	\$ 210
	(iii) Issue of a duplicate copy of a certificate of roadworthiness-	
	(A) Private car	\$ 165
	(B) Light goods vehicle (Replaced L.N. 453 of 1995. Amended L.N. 513 of 1995)	\$ 210
	* (c) Fee payable for supply of each form of a certificate of road worthiness-	
	(i) Private car	\$ 58
	(ii) Light goods vehicle	\$ 58
	(Added L.N. 50 of 1998)	

(Schedule 8 added 65 of 1985 s. 4)

*** Please see Cap 543 in relation to the fees paid by any proprietor of a car testing centre for the supply of a form of a certificate of roadworthiness in respect of a private car or light goods vehicle during the period from 9.11.1995 to 22.1.1998 (the date immediately before the commencement of L.N. 50 of 1998).**

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Chapter:	374	Title:	ROAD TRAFFIC ORDINANCE	Gazette Number:	L.N. 585 of 1997
Schedule:	10	Heading:	REQUIREMENTS APPLICABLE TO VEHICLE EMISSION TESTING CENTRES	Version Date:	16/01/1998

[sections 77C, 77D,
77F & 77H]

1. A vehicle emission testing centre shall be equipped, staffed, operated and maintained, and the testing of motor vehicles shall be conducted, in accordance with any code of practice issued and from time to time revised by the Commissioner under section 77F(1)(a).

2. Testing of motor vehicles at the vehicle emission testing centre shall be carried out only by an

approved vehicle emission tester, and under the general supervision of a responsible person.

3. Notice shall be given by the proprietor to the Commissioner forthwith of any change-
 - (a) of an approved vehicle emission tester employed at the vehicle emission testing centre;
 - (b) of a responsible person employed at the vehicle emission testing centre; and
 - (c) in the ownership of the vehicle emission testing centre, or the financial status of the proprietor, or any other matter specified by the Commissioner.
4. Subject to any practice laid down in the code of practice, the vehicle emission testing centre shall test any motor vehicle produced to it for testing for purposes of Part VIII A of the Ordinance.
5. Notices in a form approved by the Commissioner shall be prominently displayed at the vehicle emission testing centre indicating and stating-
 - (a) that the place is a vehicle emission testing centre;
 - (b) the hours that the vehicle emission testing centre is open for business;
 - (c) the names of the approved vehicle emission testers, and of the responsible person at the vehicle emission testing centre;
 - (d) the fees that are charged at the vehicle emission testing centre;
 - (e) the addresses of other vehicle emission testing centres within Hong Kong;
 - (f) the circumstances under which the issue of a certificate of compliance may be refused;
 - (g) the procedure that may be followed upon a refusal to issue a certificate of compliance; and
 - (h) a warning against the commission of offences under the Prevention of Bribery Ordinance (Cap 201) and the Independent Commission Against Corruption Ordinance (Cap 204).

6.		Fees
(a)	Fee payable for designation or renewal of designation of a place as a vehicle emission testing centre.	\$ 2,840
(b)	Fee to be charged in respect of a test of a motor vehicle.	\$ 310
(c)	Fee payable for supply of form of certificate of compliance.	\$ 30 for each form of certificate.

(Amended L.N. 273 of 1994; L.N. 500 of 1996; L.N. 585 of 1997)
(Schedule 10 Added 3 of 1991 s 13)

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Chapter:	383	Title:	HONG KONG BILL OF RIGHTS ORDINANCE	Gazette Number:	
Schedule:		Heading:	SCHEDULE	Version Date:	30/06/1997

[section 14]

PROVISIONS TO WHICH SECTION 14(1) AND (2) APPLIES

Immigration Ordinance (Cap 115)

Societies Ordinance (Cap 151)

Crimes Ordinance (Cap 200)

Prevention of Bribery Ordinance (Cap 201)

Independent Commission Against Corruption Ordinance (Cap 204)

Police Force Ordinance (Cap 232)

(Enacted 1991)

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Chapter:	503	Title:	FUGITIVE OFFENDERS ORDINANCE	Gazette Number:	71 of 1999
Section:	2	Heading:	Interpretation	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
- " arrangements for the surrender of fugitive offenders" 移交逃犯安排) means arrangements-
- (a) which are applicable to-
 - (i) the Government and the government of a place outside Hong Kong (other than the Central People' s Government or the government of any other part of the People' s Republic of China); or
 - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People' s Republic of China; and (Amended 71 of 1999 s. 3)
 - (b) for the purposes of the surrender of a person or persons wanted for prosecution, or for the imposition or enforcement of a sentence, in respect of an offence against the law of Hong Kong or that place;
- " authority to proceed" 授權進行書) means an order of the Chief Executive authorizing a person to be dealt with under Part II; (Amended 71 of 1999 s. 3)
- " authorized officer" 獲授權人員) means-
- (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
 - (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204);
- " court of committal" 負責交付拘押的法院) means any magistrate before whom is brought a person arrested pursuant to a warrant under section 7 (1), whether in the first instance or subsequently;
- " imprisonment" 監禁) includes any form of detention;
- " order of surrender" 移交令) means an order under section 13(1) for the surrender of a person to a prescribed place;
- " order of committal" 拘押令) means an order under section 10(6);
- " prescribed arrangements" 訂明安排) means arrangements for the surrender of fugitive offenders which

are the subject of an order under section 3(1) which is in force;

" prescribed place" (訂明地方) means a place outside Hong Kong to or from which a person may be surrendered pursuant to prescribed arrangements;

" provisional warrant" (臨時手令) means a warrant under section 7(1)(b);

" request for surrender" (移交要求) means a request for the surrender of a person to a prescribed place;

" supporting documents" (支持文件) means-

(a) in relation to an offence in respect of which a person is wanted for prosecution-

(i) a warrant of arrest (or a copy thereof) issued in the prescribed place which has made the request for surrender concerned; and

(ii) other documents which provide evidence of-

(A) the offence;

(B) the penalty which may be imposed in respect of the offence; and

(C) the conduct constituting the offence;

(b) in relation to an offence in respect of which a person is wanted for the imposition or enforcement of a sentence, documents which provide evidence of-

(i) the offence;

(ii) the penalty which may be imposed in respect of the offence;

(iii) the conduct constituting the offence;

(iv) the conviction;

(v) the sentence imposed or the intention to impose a sentence; and

(vi) the extent to which a sentence imposed has not been carried out;

" warrant" (手令), in relation to a prescribed place, includes any judicial document authorizing the arrest of a person wanted for prosecution in respect of an offence.

(Amended 71 of 1999 s. 3)

(2) For the purposes of this Ordinance, an offence by a person against the law of a prescribed place is a relevant offence against that law if-

(a) the offence is punishable under that law with imprisonment for more than 12 months, or any greater punishment; and

(b) the acts or omissions constituting the conduct in respect of which the person's surrender to that place is sought amount to conduct which, if the conduct had occurred in Hong Kong, would constitute an offence-

(i) coming within any of the descriptions specified in Schedule 1; and

(ii) punishable in Hong Kong with imprisonment for more than 12 months, or any greater punishment.

(3) For the purposes of subsection (2)-

(a) the law of a prescribed place includes the law of any part of that place; and

(b) conduct in-

(i) a colony or dependency; or

(ii) a vessel, aircraft or hovercraft,

of a prescribed place shall be treated as if the conduct were conduct in the territory of that place.

(4) For the avoidance of doubt, it is hereby declared that any one set of arrangements for the surrender of fugitive offenders may be made with any number (including any combination) of-

(a) governments of places outside Hong Kong;

(b) places outside Hong Kong,

and the other provisions of this Ordinance (including the definition of " arrangements for the surrender of fugitive offenders") which relate, whether directly or indirectly, to arrangements for the surrender of fugitive offenders shall be construed accordingly.

(5) Where arrangements applicable to-

(a) the Government and the government of a place outside Hong Kong; or

(b) Hong Kong and a place outside Hong Kong, are partly for the purposes specified in paragraph (b) of the definition of "arrangements for the surrender of fugitive offenders" and partly for other purposes, the arrangements are in this Ordinance arrangements for the surrender of fugitive offenders to the extent that they relate to those specified purposes.

(6) Where, but for this subsection, any arrangements are not arrangements for the surrender of fugitive offenders only because they are for the purposes of the surrender of persons accused or convicted of an offence against the law of Hong Kong or a place outside Hong Kong (or words to the like effect), then, by virtue of this subsection and for the purposes of this Ordinance, such arrangements shall be deemed to be arrangements for the surrender of fugitive offenders as if-

(a) any reference in such arrangements to the surrender of persons accused of an offence (or words to the like effect) were a reference to the surrender of persons wanted for prosecution in respect of an offence; and

(b) any reference in such arrangements to the surrender of persons convicted of an offence (or words to the like effect) were a reference to the surrender of persons wanted for the imposition or enforcement of a sentence in respect of an offence,

and the provisions of this Ordinance shall apply to any such arrangements accordingly.

(7) Where under this Ordinance any act is required to be, or may be, done by a prescribed place, that act may be done by a person on behalf of that place, and the provisions of this Ordinance shall be construed accordingly.

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Chapter:	510	Title:	JUSTICES OF THE PEACE ORDINANCE	Gazette Number:
Schedule:	1	Heading:		Version Date: 30/06/1997

[sections 2 & 8]

PART I

CUSTODIAL INSTITUTIONS

1. A prison or any other institutions under the control of the Commissioner of Correctional Services of Hong Kong within the meaning of section 23 of the Prisons Ordinance (Cap 234).
2. A place designated under section 13H of the Immigration Ordinance (Cap 115) as a detention centre.
3. An institution approved under section 11 of the Probation of Offenders Ordinance (Cap 298).
4. A place of detention appointed under section 16 of the Juvenile Offenders Ordinance (Cap 226).

PART II

DETAINED PERSONS

1. A detainee within the meaning of paragraph 2 of the Independent Commission Against Corruption

(Treatment of Detained Persons) Order (Cap 204 sub. leg.).

PART III

ADVISORY PANELS

1. An advisory panel within the meaning of section 29B of the Pension Benefits Ordinance (Cap 99).

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Chapter:	525	Title:	MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE	Gazette Number:	L.N. 449 of 1997
Section:	2	Heading:	Interpretation	Version Date:	26/09/1997

Remarks:

Adaptation amendments retroactively made - see 71 of 1999 s. 3

- (1) In this Ordinance, unless the context otherwise requires-
- " ancillary criminal matter" 附帶刑事事宜) means a matter relating to-
- (a) the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a Hong Kong offence or an external offence; or
 - (b) the obtaining, enforcement or satisfaction of a Hong Kong confiscation order or an external confiscation order;
- " appropriate authority" 有關當局), in relation to a place outside Hong Kong, means a person whom the Secretary for Justice is satisfied is a person who for the time being may under the law of that place- (Amended L.N. 362 of 1997)
- (a) in the case of a request by Hong Kong to that place for assistance in a criminal matter, receive such a request; or
 - (b) in the case of a request by that place to Hong Kong for assistance in a criminal matter, make such a request;
- " arrangements for mutual legal assistance" 相互法律協助的安排) means arrangements-
- (a) which are applicable to-
 - (i) the Government and the government of a place outside Hong Kong (other than the Central People' s Government or the government of any other part of the People' s Republic of China); or
 - (ii) Hong Kong and a place outside Hong Kong (other than any other part of the People' s Republic of China); and (Amended 71 of 1999 s. 3)
 - (b) for the purposes of the provision and obtaining of assistance in criminal matters between Hong Kong and that place;
- " assistance" 協助) includes giving evidence;
- " authorized officer" 獲授權人員) means-
- (a) any police officer;
 - (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342);
 - (c) any officer within the meaning of section 2 of the Independent Commission Against Corruption Ordinance (Cap 204); and

- (d) any other person (including a person belonging to a class of persons) authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)
- " court" 法院) includes a tribunal and magistrate;
- " criminal matter" 刑事事宜) means-
- (a) an investigation;
 - (b) a prosecution; or
 - (c) an ancillary criminal matter;
- " dealing" 處理), in relation to property, includes-
- (a) receiving or acquiring the property;
 - (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
 - (c) disposing of or converting the property;
 - (d) bringing into or removing from Hong Kong the property;
 - (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise);
- " duly certified" 妥為核證) means (except in sections 29 and 30) duly certified as provided in section 32;
- " external confiscation order" 外地沒收令) means an order, made under the law of a place outside Hong Kong, for the purpose of-
- (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with an external serious offence or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with an external serious offence or the value of such property; or
 - (iii) property used or intended to be used in connection with an external serious offence or the value of such property; or
 - (b) depriving a person of a pecuniary advantage obtained in connection with an external serious offence,
- and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;
- " external law immunity certificate" 外地法律豁免權證明書) means a certificate given, or a declaration made, by a place outside Hong Kong or under a law of a place outside Hong Kong certifying or declaring that, under the law of that place, persons generally or a specified person could or could not, either generally or in specified proceedings and either generally or in specified circumstances, be required-
- (a) to answer a specified question; or
 - (b) to produce a specified document;
- " external offence" 外地罪行) means an offence against a law of a place outside Hong Kong;
- " external prisoner" 外地囚犯) means a person who is-
- (a) being held in custody pending trial for or sentence for an external offence; or
 - (b) under a sentence of imprisonment for an external offence,
- but does not include a person who is at large having escaped from lawful custody;
- " external serious offence" 外地嚴重罪行) means an external offence the maximum penalty for which is death, or imprisonment for not less than 24 months;
- " Hong Kong confiscation order" 香港沒收令) means an order, made under a law of Hong Kong, for the purpose of-
- (a) recovering (including forfeiting or confiscating)-
 - (i) payments or other rewards received in connection with a Hong Kong serious offence

- or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with a Hong Kong serious offence or the value of such property; or
 - (iii) property used or intended to be used in connection with a Hong Kong serious offence or the value of such property; or
 - (b) depriving a person of a pecuniary advantage obtained in connection with a Hong Kong serious offence,
- and whether the proceedings which gave rise to that order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property;
- " Hong Kong offence" 香港罪行) means an offence against a law of Hong Kong;
- " Hong Kong prisoner" 香港囚犯) means a person who is-
- (a) being held in custody pending trial for or sentence for a Hong Kong offence; or
 - (b) under a sentence of imprisonment for a Hong Kong offence,
- but does not include a person who is at large having escaped from lawful custody;
- " Hong Kong serious offence" 香港嚴重罪行) means a Hong Kong offence the maximum penalty for which is death, or imprisonment for not less than 24 months;
- " investigation" 偵查) means an investigation-
- (a) into a Hong Kong offence or external offence; or
 - (b) for the purposes of an ancillary criminal matter;
- " material" 物料) includes any books, document or other record in any form whatsoever, and any article or substance;
- " Monetary Authority" 金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);
- " premises" 處所) includes-
- (a) a structure (whether or not movable or offshore), building, tent, vehicle, vessel, aircraft or hovercraft;
 - (b) a place (whether or not enclosed or built upon); and
 - (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));
- " prescribed arrangements" 訂明安排) means arrangements for mutual legal assistance which are the subject of an order under section 4(1) which is in force;
- " prescribed place" 訂明地方) means a place outside Hong Kong to or from which assistance in criminal matters may be provided or obtained, as the case may be, pursuant to prescribed arrangements;
- " prosecution" 檢控) means a trial of a person for a Hong Kong offence or external offence, and includes any proceedings to determine whether a person should be tried for such an offence;
- " relevant auditor" 有關核數師) means a person appointed as an auditor for the purposes of any enactment;
- " restrain" 限制), in relation to property, includes seizing the property;
- " statement" 陳述) includes evidence;
- " tax adviser" 稅務顧問) means a person appointed bona fide to give advice, in the course of his employment or of a business carried on by him, about the tax affairs of another person (whether appointed directly by that other person or another tax adviser of that other person);
- " tax document" 稅務文件)-
- (a) in relation to a tax adviser, means a document which falls within Part 1 of Schedule 1;
 - (b) in relation to a relevant auditor, means a document which falls within Part 2 of Schedule 1;
- " thing" 物件) includes material.

(Amended 71 of 1999 s. 3)

(2) For the purposes of this Ordinance-

- (a) the law of a place outside Hong Kong includes the law of any part of that place;
- (b) conduct in-
 - (i) a colony or dependency; or
 - (ii) a vessel, aircraft or hovercraft,
 of a place outside Hong Kong shall be treated as if the conduct were conducted in the territory of that place.

(3) For the avoidance of doubt, it is hereby declared that any one set of arrangements for mutual legal assistance may be made with any number (including any combination) of-

- (a) governments of places outside Hong Kong;
- (b) places outside Hong Kong,

and the other provisions of this Ordinance (including the definition of "arrangements for mutual legal assistance") which relate, whether directly or indirectly, to arrangements for mutual legal assistance shall be construed accordingly.

(4) Where arrangements applicable to-

- (a) the Government and the government of a place outside Hong Kong; or
- (b) Hong Kong and a place outside Hong Kong,

are partly for the purposes specified in paragraph (b) of the definition of "arrangements for mutual legal assistance" and partly for other purposes, the arrangements are in this Ordinance arrangements for mutual legal assistance to the extent that they relate to those specified purposes.

(5) In the definitions of "Hong Kong confiscation order" and "external confiscation order" and in subsection (9), any reference to an order includes any order, decree, direction or judgment, or any part thereof, howsoever described.

(6) Where a person obtains a pecuniary advantage referred to in paragraph (b) of the definition of "Hong Kong confiscation order" or "external confiscation order", he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the Hong Kong serious offence or external serious offence, as the case may be, to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly.

(7) For the avoidance of doubt, it is hereby declared that this Ordinance shall not entitle a private person, or any person acting on behalf of a private person, to-

- (a) obtain, suppress or exclude any evidence; or
- (b) impede or otherwise prejudice any request under this Ordinance,

in respect of a criminal matter in Hong Kong or a place outside Hong Kong.

(8) In this Ordinance, any reference (howsoever expressed) to any thing being required to be done, or being done, in relation to a criminal matter also includes a reference to such a thing being required to be done, or being done, in the criminal matter.

(9) In this Ordinance, any reference to an order being made in a proceeding includes a reference to an order arising out of the proceeding.

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Chapter:	525	Title:	MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE	Gazette Number:	L.N. 123 of 1998
Section:	12	Heading:	Requests to Hong Kong for search and seizure	Version Date:	20/02/1998

(1) Where-

- (a) a criminal matter involving an external serious offence has commenced in a place outside Hong Kong;
- (b) there are reasonable grounds to believe that a thing (including a thing belonging to a class of things) relevant to the criminal matter is located in Hong Kong; and
- (c) an appropriate authority of that place requests the Secretary for Justice to arrange for the issue of a search warrant under this section in relation to that thing,

the Secretary for Justice may nominate in writing an authorized officer to apply to a magistrate for the search warrant so requested. (Amended L.N. 362 of 1997)

(2) Where an authorized officer nominated under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be-

- (a) on a person;
- (b) in the clothing that is being worn by a person;
- (c) otherwise in a person's effective control;
- (d) upon any land; or
- (e) upon or in any premises,

the relevant officer may-

- (i) lay before a magistrate an information on oath setting out the grounds for that belief; and
- (ii) apply for the issue of a warrant under this section.

(3) Where an application is made under subsection (2), the magistrate shall, subject to subsection (4), issue a warrant authorizing an authorized officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable to do such of the following as are specified in the warrant-

- (a) to search a person specified in the warrant for the thing;
- (b) to enter upon land, or upon or into premises, specified in the warrant;
- (c) to search any such land or premises for the thing; and
- (d) to seize any thing found in the course of any such search that the relevant officer believes, on reasonable grounds, to be relevant to the criminal matter in the place outside Hong Kong concerned.

(4) A magistrate shall not issue a warrant under this section unless-

- (a) the informant or some other person has given to the magistrate either orally on oath or by affidavit, such further information, if any, as the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(5) There shall be stated in a warrant issued under this section-

- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized;
- (b) whether the search is authorized at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorized to be seized; and
- (d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.

(6) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the authorized officer finds another thing that the authorized officer believes on reasonable grounds-

- (a) to be relevant to the criminal matter in the place outside Hong Kong concerned or to afford evidence as to the commission of a Hong Kong offence; and
- (b) is likely to be concealed, lost, destroyed or altered if it is not seized,

the warrant shall be deemed to authorize the authorized officer to seize the other thing.

(7) Where an authorized officer finds, as a result of a search in accordance with a warrant issued under this section, a thing which the authorized officer seizes wholly or partly because he believes the thing on reasonable grounds to be relevant to the criminal matter in the place outside Hong Kong

concerned, the authorized officer shall deliver the thing into the custody and control of the Commissioner.

(8) Where a thing is delivered into the custody and control of the Commissioner under subsection (7), the Commissioner shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized pending a direction in writing from the Secretary for Justice as to the manner in which the thing is to be dealt with (which may include, subject to subsection (11), a direction that the thing be sent to an appropriate authority of a place outside Hong Kong). (Amended L.N. 362 of 1997)

(9) An authorized officer who executes a search warrant issued under this section shall, as soon as practicable after the execution of the warrant, give to the person, or give to the owner or occupier of the land or premises or leave in a prominent position on the land or at the premises, as the case requires-

- (a) a notice setting out-
 - (i) the name and rank of the authorized officer;
 - (ii) the name of the magistrate who issued the warrant and the day on which it was issued; and
 - (iii) a description of any thing seized and removed in accordance with the warrant; and
- (b) in the case of any such thing which is a document, a copy of the document if that person, owner or occupier, as the case may be, so requests.

(10) Where subsection (3)(a) is applicable to a warrant issued under this section-

- (a) an authorized officer acting in accordance with the warrant may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant;
- (b) a person shall not be searched pursuant to the warrant except by a person of the same sex;
- (c) nothing in this section shall be taken to authorize an authorized officer to carry out a search by way of an examination of a body cavity of a person;
- (d) an authorized officer may also search-
 - (i) the clothing that is being worn by a person; and
 - (ii) any property in, or apparently in, the person's effective control.

(11) The Secretary for Justice shall not give a direction under subsection (8) that the original of a thing be sent to the appropriate authority of a place outside Hong Kong unless-

- (a) the appropriate authority of the place has, not more than 1 month after the thing was seized, given the Secretary for Justice a notice in writing setting out the grounds on which the original of the thing is required for the purposes of the criminal matter concerned in that place; and
- (b) in any case where the Secretary for Justice is of the opinion, after considering all the circumstances, that the original of the thing should be returned to Hong Kong upon the conclusion of the proceedings relating to that criminal matter, the appropriate authority has given an unqualified undertaking to the Secretary for Justice that the original of the thing will be so returned. (Amended L.N. 362 of 1997)

(12) In this section, " Commissioner" 部門首長) means, where the authorized officer concerned is an authorized officer by virtue of-

- (a) paragraph (a) or (d) of the definition of " authorized officer" , Commissioner within the meaning of the Police Force Ordinance (Cap 232);
- (b) paragraph (b) of the definition of " authorized officer" , Commissioner within the meaning of the Customs and Excise Service Ordinance (Cap 342);
- (c) paragraph (c) of the definition of " authorized officer" , Commissioner within the meaning of the Independent Commission Against Corruption Ordinance (Cap 204).

(13) For the purposes of this section, in the case of a criminal matter in a place outside Hong Kong which is an investigation into an external offence relating to taxation, " thing" does not include a tax document which-

- (a) is the property of a tax adviser or relevant auditor; and

- (b) in the case of a tax adviser, originates from him, or from his client or another tax adviser of the client, for or in connection with the giving or obtaining of advice about the tax affairs of the client.

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Chapter:	532	Title:	INTERCEPTION OF COMMUNICATIONS ORDINANCE	Gazette Number:
Section:	2	Heading:	Interpretation	Version Date:

Remarks:

Not yet in operation

In this Ordinance, unless the context otherwise requires-

- " authorized officer" 獲授權人員) means an officer who has been authorized by a court order to intercept a communication in the course of its transmission by post or by means of telecommunication system through the use of any electro-magnetic, acoustic, mechanical or other device;
- " communication" 通訊) means postal or telecommunication;
- " electro-magnetic, acoustic, mechanical or other device" 電磁、傳音、機械或其他裝置) means any device or apparatus that is used or is capable of being used to intercept a telecommunication, but does not include a hearing aid used to correct subnormal hearing of the user to not better than normal hearing;
- " intercept" 截取) means the aural or other acquisition of the contents of any postal communication, telecommunication, or telecommunication through the use of any electro-magnetic, acoustic, mechanical or other device;
- " intercepted material" 被截取的材料) means the contents of any postal communication or telecommunication that has been obtained through interception;
- " law enforcement officer" 執法人員) means any police officer and any officer appointed-
 - (a) under the Customs and Excise Service Ordinance (Cap 342);
 - (b) under section 8 of the Independent Commission Against Corruption Ordinance (Cap 204);
 - (c) by the Immigration Department; or
 - (d) by the Correctional Services Department;
- " person" 人) includes any organization and any association or combination of persons;
- " serious crime" 嚴重罪行) means any offence punishable by a maximum period of imprisonment of not less than 7 years;
- " telecommunication" 電訊) has the same meanings as in section 2 of the Telecommunication Ordinance (Cap 106).

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Chapter:	532	Title:	INTERCEPTION OF COMMUNICATIONS ORDINANCE	Gazette Number:
Section:	5	Heading:	Application for authorization	Version Date:

Remarks:

Not yet in operation

(1) An application to the High Court for an order authorizing the interception of communications under section 4 may only be made by-

- (a) any officer of the Royal Hong Kong Police Force of or above the level of superintendent;
- (b) any senior officer of the Customs and Excise Service as defined in section 2 of the Customs and Excise Service Ordinance (Cap 342);
- (c) any investigating officer authorized by the Commissioner of the Independent Commission Against Corruption and who is appointed under section 8 of the Independent Commission Against Corruption Ordinance (Cap 204);
- (d) any senior officer of the Immigration Department; or
- (e) any senior officer of the Correctional Services Department.

(2) An application for authorization shall be made ex parte and in writing to a judge of the High Court in Chambers and shall be accompanied by a sworn affidavit deposing to the following matters-

- (a) the name and rank of the officer making the application;
- (b) particulars of the offence or offences under investigation;
- (c) the name and address of the person who is believed to have committed, is committing or is about to commit the offence or offences under paragraph (b) and whose communications are to be intercepted for the purpose of investigating that offence;
- (d) a description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
- (e) the type of communication sought to be intercepted and the method of interception to be used;
- (f) whether he wishes for a person authorized under the Post Office Ordinance (Cap 98) or the Telecommunication Ordinance (Cap 106) to assist him with the interception;
- (g) what other investigative methods have been used and why they have failed or are unlikely to succeed;
- (h) the duration of the interception; and
- (i) particulars of any previous application involving the same person.

(3) Where a serious threat of death or bodily harm to a person exists and it is impracticable to make an application for an order authorizing the interception of communications in accordance with subsection (2), an officer listed in subsection (1), with the written permission of-

- (a) the Commissioner of Police, where the officer involved is an officer of the Royal Hong Kong Police Force;
- (b) the Commissioner for Customs and Excise Service, where the officer involved is a senior officer of the Customs and Excise Service;
- (c) the Commissioner of the Independent Commission Against Corruption, where the officer is an officer of the Independent Commission Against Corruption;
- (d) the Director of Immigration, where the officer is an officer of the Immigration Department;
or
- (e) the Commissioner of Correctional Services, where the officer is an officer of the Correctional Services Department,

may intercept a communication without prior authorization.

(4) Where an interception under subsection (3) occurs, unless the officer conducting the interception makes an application for authorization in accordance with subsections (1) and (2) within 48 hours from the beginning of the interception giving-

- (a) the reasons for not making an application prior to interception; and
- (b) a copy of the written permission given by-
 - (i) the Commissioner of Police, where the officer involved is an officer of the Royal Hong Kong Police Force;
 - (ii) the Commissioner for Customs and Excise Service, where the officer involved is an officer of the Customs and Excise Service;
 - (iii) the Commissioner of the Independent Commission Against Corruption, where the officer involved is an officer of the Independent Commission Against Corruption;
 - (iv) the Director of Immigration, where the officer is an officer of the Immigration Department; or
 - (v) the Commissioner of Correctional Services, where the officer is an officer of the Correctional Services Department,

the interception shall be deemed unlawful under section 3.

(5) Any interception which is conducted pursuant to subsection (3) shall immediately terminate when the communication sought is obtained or when an application for authorization is denied, whichever is earlier.

(6) Where an application for authorization under subsection (4) is denied, the intercepted material shall be destroyed immediately.

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Chapter:	541D	Title:	ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION	Gazette Number:	L.N. 65 of 2000
Section:	96	Heading:	Enforcement of provisions as to secrecy	Version Date:	05/05/2000

(1) A person who divulges to any other person, by communicating information as to the name or identity document number in a register of electors, or otherwise, whether a person has or has not applied for a ballot paper or voted, commits an offence.

(2) Subsection (1) does not apply to anything done for a purpose authorized by law or when required to do so by a police officer or an officer of the Independent Commission Against Corruption investigating an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), sections 3, 4 and 8 of the Prevention of Bribery Ordinance (Cap 201), section 13B of the Independent Commission Against Corruption Ordinance (Cap 204) or the Electoral Affairs Commission Ordinance (Cap 541) or any regulation made under that Ordinance. (10 of 2000 s. 47)

(3) A person who communicates to any person any information obtained at a counting of the votes as to the candidate for whom a vote has been given on any particular ballot paper, commits an offence.

(4) A person who interferes with an elector when that elector is recording the vote, commits an offence.

(5) A person who interferes with or attempts to interfere with any ballot boxes, un-issued ballot papers, unused ballot papers, spoiled ballot papers, tendered ballot papers, marked ballot papers or a copy of the final register marked under section 53(7), commits an offence. (L.N. 65 of 2000)

(6) A person who interferes with or attempts to interfere with any opened ballot boxes, ballot paper accounts, verifications or re-verifications of such accounts or any other relevant election materials referred to in this Regulation commits an offence.

(7) A person who obtains or attempts to obtain in any manner-

(a) within a polling station or a no staying zone; or

(b) within a no canvassing zone, without the express permission of the Presiding Officer or the Commission,

information as to the candidate for whom an elector in that station is about to vote or has voted, commits an offence.

(8) A person who communicates at any time to any person any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted, commits an offence.

(9) A person who directly or indirectly induces an elector to display the elector's ballot paper after the elector has marked it, so as to make known to any person a candidate for or against whom the elector has voted, commits an offence.

(10) A person who commits an offence under this section is liable to a fine at level 2 and to imprisonment for 3 months.

(11) In this section, references to-

(a) " candidate" are to be construed as including a list of candidates; and

(b) " elector" are to be construed as including an authorized representative.

----- Forwarded by Carmen KM WONG/DOJ/HKSARG on 14/11/2001 09:20 AM -----

Chapter:	541F	Title:	ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (DISTRICT COUNCILS) REGULATION	Gazette Number:	L.N. 55 of 2000
Section:	94	Heading:	Enforcement of provisions as to secrecy	Version Date:	03/03/2000

(1) A person who divulges to any other person, by communicating information as to the name or identity document number in the final register or a copy or extract of the final register, of electors, or otherwise, whether a person has or has not applied for a ballot paper or voted, commits an offence.

(2) Subsection (1) does not apply to anything done for a purpose authorized by law or when required to do so by a police officer or an officer of the Independent Commission Against Corruption investigating an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), section 13B of the Independent Commission Against Corruption Ordinance (Cap 204), or the Electoral Affairs Commission Ordinance (Cap 541) or any regulation made under that Ordinance. (10 of 2000 s. 47)

(3) A person who communicates to any person any information obtained at a counting of the votes as to the candidate for whom a vote has been given on any particular ballot paper, commits an offence.

(4) A person who interferes with an elector when that elector is recording the vote, commits an offence.

(5) A person who interferes with or attempts to interfere with any ballot boxes, un-issued ballot

papers, unused ballot papers, spoilt ballot papers, tendered ballot papers, marked ballot papers or a copy or extract of the final register marked under section 56(3), commits an offence.

(6) A person who interferes with or attempts to interfere with any opened ballot boxes, ballot paper accounts, verifications or re-verifications of such accounts or any other relevant election materials referred to in this Regulation commits an offence.

(7) A person who obtains or attempts to obtain in any manner-

(a) within a polling station or a no staying zone; or

(b) within a no canvassing zone, without the express permission of the Presiding Officer or the Commission,

information as to the candidate for whom an elector in that station is about to vote or has voted, commits an offence.

(8) A person who communicates at any time to any person any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted, commits an offence.

(9) A person who directly or indirectly induces an elector to display the elector's ballot paper after the elector has marked it, so as to make known to any person a candidate for or against whom the elector has voted, commits an offence.

(10) A person who commits an offence under this section is liable to a fine at level 2 and to imprisonment for 3 months.

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Chapter:	542	Title:	LEGISLATIVE COUNCIL ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	39	Heading:	When person is disqualified from being nominated as a candidate and from being elected as a Member	Version Date:	03/03/2000

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person-

(a) is-

(i) a judicial officer; or

(ii) a prescribed public officer; or

(iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or (Amended 48 of 1999 s. 24)

(b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-

(i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or

(ii) received a free pardon; or

(c) has been convicted of treason; or

(d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or

(e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-

(i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3

- months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (f) is-
- (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
 - (ii) disqualified from being a candidate, or from being elected as a Member, at the election,
- because of the operation of this or any other law; or
- (g) is a representative or salaried functionary of a government of a place outside Hong Kong; or
- (h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people' s congress or people' s consultative body of the People' s Republic of China, whether established at the national or local level; or
- (i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a composition with the person' s creditors or a voluntary arrangement, in either case without paying the creditors in full.

(2) A person is also disqualified from being nominated as a candidate at an election if, in accordance with the Mental Health Ordinance (Cap 136), the Court has found the person to be of unsound mind and incapable of managing himself or herself and his or her affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person' s unsoundness of mind has ceased.

(3) A person is also disqualified from being elected as a Member if, in accordance with the Mental Health Ordinance (Cap 136), the Court has found the person to be of unsound mind and incapable of managing himself or herself and his or her affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person' s unsoundness of mind has ceased.

(4) A person is also disqualified from being elected as a Member for a functional constituency if, since the close of nominations, the person has ceased to have a substantial connection with the constituency.

(5) In this section-

" judicial officer" 司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);

" prescribed public officer" 評明的公職人員) means any of the following-

- (a) the Chairman of the Public Service Commission;
- (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);
- (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397);
- (d) a member of the Electoral Affairs Commission;
- (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); (Added 48 of 1999 s. 24)
- (eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); (Added 48 of 1999 s. 24)

- (f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.

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Chapter:	547	Title:	DISTRICT COUNCILS ORDINANCE	Gazette Number:	L.N. 55 of 2000
Section:	2	Heading:	Interpretation	Version Date:	03/03/2000

In this Ordinance, unless the context otherwise requires-

- " appointed member" 委任議員) means a person who is appointed as a member of a District Council under section 11 or 16;
- " by-election" 補選) means an election to elect a person as an elected member otherwise than at an ordinary election;
- " candidate" 候選人) means a candidate nominated for election as an elected member;
- " Chairman" 主席) means, in relation to a District Council, the person holding the office of Chairman of that Council under Part VI;
- " committee" 委員會) means, in relation to a District Council, a committee appointed by it under section 71;
- " constituency" 選區) means an area declared to be a constituency under section 6(1)(a);
- " corrupt conduct" 舞弊行為) means corrupt conduct engaged in in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); (Replaced 10 of 2000 s. 47)
- " costs" 費用、訟費) includes charges and expenses;
- " Court" means the Court of First Instance;
- " Designated Officer" 指定人員) means the Director of Home Affairs;
- " District" 地方行政區) means an area declared to be a District in or under this Ordinance;
- " District Council" 區議會) means a body established as a District Council by or under this Ordinance;
- " District Officer" 民政事務專員) means, in relation to a District Council, the person who performs the functions of the office of District Officer in the Home Affairs Department for the District for which that District Council is established;
- " elected member" 民選議員) means a person who is elected as a member of a District Council under Part V;
- " election" 選舉) means an ordinary election or a by-election;
- " election petition" 選舉呈請、選舉呈請書) means an election petition lodged under Part V;
- " elector" 選民) means any person whose name is included in the existing final register;
- " Electoral Affairs Commission" 選舉管理委員會) means the Electoral Affairs Commission established by section 3 of the Electoral Affairs Commission Ordinance (Cap 541);
- " electoral officer" 選舉事務主任) includes a Returning Officer, an Assistant Returning Officer, the Electoral Registration Officer, or any other person who is appointed under this Ordinance or the Electoral Affairs Commission Ordinance (Cap 541) to exercise functions or perform duties at or in connection with an election;
- " Electoral Registration Officer" 選舉登記主任) has the meaning given by the Legislative Council Ordinance (Cap 542);
- " existing final register" 現有的正式選民登記冊) means a final register of geographical constituencies compiled and published by the Electoral Registration Officer under section 32 of the Legislative

- Council Ordinance (Cap 542) which is currently in force;
- " ex officio member" 當然議員) means a person who holds office as such under section 9(1)(c);
- " function" 職能) includes a power and an authority;
- " identity document" 身分證明文件) means-
- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap 177); or
 - (b) a document issued to a person under regulations in force under that Ordinance certifying that the person is exempt from being required to register under that Ordinance; or
 - (c) any other document issued to a person that is acceptable to the Electoral Registration Officer as proof of the person' s identity;
- " illegal conduct" 非法行為) means illegal conduct engaged in in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); (Replaced 10 of 2000 s. 47)
- " judicial officer" 司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);
- " member" 議員) means an elected member, an appointed member or an ex officio member;
- " ordinary election" (一般選舉) means-
- (a) in relation to a District Council, the first election to elect persons to be the elected members of the District Council; or
 - (b) elections to elect persons to fill the vacancies caused by the expiration of the term of office of the elected members of District Councils;
- " prescribed public officer" 訂明公職人員) means any of the following-
- (a) the Chairman of the Public Service Commission; or
 - (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204); or
 - (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397); or
 - (d) a member of the Electoral Affairs Commission; or
 - (e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority; or
 - (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); or
 - (g) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); or
 - (h) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau;
- " the regulations" 《規例》) means regulations made and in force under this Ordinance;
- " Returning Officer" 選舉主任) means a person holding office as a Returning Officer under section 75 and includes any person appointed to act in place of such an Officer when the Officer is absent or when an office of Returning Officer is vacant;
- " Rural Committee" 鄉事委員會) has the meaning given by section 3(3) of the Heung Yee Kuk Ordinance (Cap 1097);
- " Vice Chairman" 副主席) means, in relation to a District Council, the person holding the office of Vice Chairman of that Council under Part VI.

Chapter:	569	Title:	CHIEF EXECUTIVE ELECTION ORDINANCE	Gazette Number:	L.N. 187 of 2001
Section:	2	Heading:	Interpretation	Version Date:	21/09/2001

- (1) In this Ordinance, unless the context otherwise requires-
- " Acting Chief Executive" 署理行政長官) means any public officer assuming the duties of the Chief Executive pursuant to Article 53 of the Basic Law;
- " candidate" 候選人) means a candidate who is determined to be validly nominated under section 17;
- " Chief Electoral Officer" 總選舉事務主任) means the Chief Electoral Officer appointed under section 9 of the Electoral Affairs Commission Ordinance (Cap 541);
- " Chief Executive" 行政長官) means the Chief Executive of the Hong Kong Special Administrative Region;
- " Court" 原訟法庭) means the Court of First Instance;
- " EAC Regulations" 《選管會規例》) means regulations made under section 7 of the Electoral Affairs Commission Ordinance (Cap 541);
- " election" 選舉) means an election held under section 6;
- " Election Committee" 選舉委員會) means the Election Committee constituted under section 8;
- " election petition" 選舉呈請、選舉呈請書) means an election petition lodged under section 33(1);
- " Electoral Affairs Commission" 選舉管理委員會) means the Electoral Affairs Commission established by section 3 of the Electoral Affairs Commission Ordinance (Cap 541);
- " electoral officer" 選舉事務人員) means-
- (a) the Returning Officer;
 - (b) the Chief Electoral Officer;
 - (c) an Assistant Returning Officer appointed under section 41(3);
 - (d) the Electoral Registration Officer appointed under section 44 of the Schedule;
 - (e) an Assistant Electoral Registration Officer appointed under section 44 of the Schedule;
 - (f) a Revising Officer appointed under section 46 of the Schedule;
 - (g) a Returning Officer appointed under section 47 of the Schedule;
 - (h) an Assistant Returning Officer appointed under section 47 of the Schedule; or
 - (i) any other person who is appointed under this Ordinance or the Electoral Affairs Commission Ordinance (Cap 541) to perform functions at or in connection with an election or a subsector election;
- " final register of members of the Election Committee" 選舉委員會正式委員登記冊) means the register compiled under section 40 of the Schedule;
- " function" 職能) includes a power and a duty;
- " member of the Election Committee" 選舉委員) means a person whose name appears in the final register of members of the Election Committee;
- " poll" 投票) means a poll conducted under section 24;
- " polling date" 投票日) means the date fixed in accordance with section 10 or 11 as the date of the poll at an election;
- " prescribed public officer" 訂明公職人員) means any of the following-
- (a) the Chairman of the Public Service Commission;
 - (b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);
 - (c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman

Ordinance (Cap 397);

- (d) a member of the Electoral Affairs Commission;
- (e) the Chief Executive of the Hong Kong Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;
- (f) the Privacy Commissioner for Personal Data and any person employed or engaged by him under the Personal Data (Privacy) Ordinance (Cap 486);
- (g) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480);
- (h) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau;

" Returning Officer" 選舉主任) means the Returning Officer appointed under section 41(1);

" Revising Officer" 審裁官) has the meaning assigned to it by section 1(1) of the Schedule;

" subsector election" 界別分組選舉) has the meaning assigned to it by section 1 of the Schedule;

" working day" 工作日) means any day other than-

- (a) a public holiday;
- (b) any day throughout or for part of which a black rainstorm warning is in force, and " black rainstorm warning" 黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; and
- (c) any day throughout or for part of which a gale warning is in force, and " gale warning" 烈風警告) means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, Hong Kong by the use of any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10.

(2) Any reference in this Ordinance to the performance of a function includes a reference to the exercise of a power or performance of a duty, as the case may be.