

The Ombudsman Ordinance

(Cap. 397)

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To make provision for the appointment, powers and functions of an Ombudsman to investigate, whether upon complaint or of his own motion, administrative actions taken on behalf of the Government or public authorities, and for purposes connected therewith.

(Amended 44 of 1994 s. 2; 74 of 1996 s. 2)

[1 February 1989] *L.N. 27 of 1989*

Editorial Note:

For savings and transitional provisions in The Ombudsman (Amendment) Ordinance 2001 (30 of 2001), see Part III (sections 21 to 23) of that Ordinance.

Part I

Preliminary

(Format changes—E.R. 4 of 2018)

1. Short title

(Amended E.R. 4 of 2018)

This Ordinance may be cited as The Ombudsman Ordinance *(words omitted as spent—E.R. 4 of 2018)*.

(Amended 74 of 1996 s. 3)

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
action (行動) includes omission, recommendation or decision;
head (首長) in relation to—

- (a) an organization other than the Government Secretariat means the head, director or equivalent officer of the organization;
- (b) the Government Secretariat means the head of a subdivision thereof to whom the officer whose action is the subject of the relevant complaint is responsible;
(*Replaced 44 of 1994 s. 3*)

investigation (調査) means an investigation by the Ombudsman under this Ordinance; (*Amended 74 of 1996 s. 11*)

maladministration (行政失當) means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes—

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power (including any discretionary power) or authority including any action which—
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact; or
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

officer (人員) includes employee;

Ombudsman (專員) means The Ombudsman referred to in section 3(1); (*Added 74 of 1996 s. 4. Amended 30 of 2001 s. 2*)

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organization (機構) means an organization specified in Schedule 1.
(Replaced 44 of 1994 s. 3)

(Amended 74 of 1996 s. 4)

- (2) Any reference in this Ordinance to an organization includes a reference to the officers of that organization. (Amended 44 of 1994 s. 3)
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Part II

Appointment of the Ombudsman

(Amended 74 of 1996 s. 11)

(Format changes—E.R. 4 of 2018)

3. Appointment and tenure of office

- (1) For the purposes of this Ordinance, there shall be a corporation sole known as “The Ombudsman”. *(Replaced 30 of 2001 s. 3)*
- (2) The Ombudsman shall have perpetual succession and—
 - (a) may sue and be sued in that corporate name; and
 - (b) shall have an official seal. *(Replaced 30 of 2001 s. 3)*
- (3) The Chief Executive shall in writing under his hand appoint a person to be the Ombudsman. *(Replaced 30 of 2001 s. 3)*
- (3A) A person appointed to be the Ombudsman shall, subject to subsection (4), hold office for a period of 5 years and shall be eligible for reappointment. *(Added 30 of 2001 s. 3)*
- (4) A person appointed to be the Ombudsman may—
 - (a) at any time resign his office by notice in writing to the Chief Executive;
 - (b) be removed from office by the Chief Executive with the approval by resolution of the Legislative Council on the ground of inability to discharge the functions of his office, or misbehaviour.
- (5) The emoluments of the person appointed to be the Ombudsman, and the terms and conditions of his appointment, shall be determined by the Chief Executive. *(Amended 30 of 2001 s. 3)*

- (6) Any salary or other benefit payable to the person appointed to be the Ombudsman shall be charged on the general revenue. *(Amended 30 of 2001 s. 3)*
- (7) The financial and report provisions set out in Schedule 1A shall have effect with respect to the Ombudsman. *(Added 30 of 2001 s. 3)*

(Amended 74 of 1996 s. 11; 25 of 1998 s. 2)

4. Ombudsman to hold no other office

The person appointed to be the Ombudsman shall not, without the specific approval of the Chief Executive, hold any office of profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(Amended 74 of 1996 s. 11; 25 of 1998 s. 2; 30 of 2001 s. 4)

5. Filling of temporary vacancy

- (1) If the person appointed to be the Ombudsman— *(Amended 30 of 2001 s. 5)*
 - (a) dies;
 - (b) resigns;
 - (c) is removed from office;
 - (d) is absent from Hong Kong; or
 - (e) is for any other reason unable to perform the functions of his office,

those functions shall, until such time as he resumes the functions of his office or another person is appointed to be the Ombudsman under section 3, be assumed and performed by such person as may be appointed in writing under the hand of the Chief Executive to act as Ombudsman. *(Amended 25 of 1998 s. 2; 30 of 2001 s. 5)*

- (2) All provisions, except section 3(3), (3A) and (4), of this Ordinance that apply to the person appointed to be the Ombudsman shall apply to the person appointed to act as the Ombudsman. *(Replaced 30 of 2001 s. 5)*

(Amended 74 of 1996 s. 11)

6. Staff of Ombudsman

- (1) The Ombudsman may appoint such persons as may be necessary for the efficient carrying out of his functions under this Ordinance.
- (2) The salaries of persons appointed under subsection (1), and the terms and conditions of their appointments, shall be determined by the Ombudsman. *(Amended 25 of 1998 s. 2; 30 of 2001 s. 6)*
- (3) Subject to section 3(6) the expenses of the Ombudsman and any salary or benefit payable to any person appointed under subsection (1) shall be paid out of moneys appropriated for that purpose by the Legislative Council.

(Amended 74 of 1996 s. 11)

6A. Advisers

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

(Added 30 of 2001 s. 7)

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

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

- (2) For the purposes of the Prevention of Bribery Ordinance (Cap. 201), the person appointed to be the Ombudsman shall be deemed to be a public servant within the meaning of section 2 of that Ordinance.
- (3) For the purposes of the Public Finance Ordinance (Cap. 2), the person appointed to be the Ombudsman shall be deemed to be a public officer and shall be designated as the controlling officer in respect of the estimates of expenditure of the Ombudsman under section 12 of that Ordinance.

(Added 30 of 2001 s. 7)

Part III

Functions and Powers of the Ombudsman

(Amended 74 of 1996 s. 11; 30 of 2001 s. 8)

(Format changes—E.R. 4 of 2018)

7. Functions and powers of Ombudsman

- (1) The Ombudsman may investigate any action taken by or on behalf of—
- (a) an organization set out in Part 1 of Schedule 1 in the exercise of its administrative functions; or
 - (b) an organization set out in Part 2 of Schedule 1 in the exercise of its administrative functions in relation to the Code on Access to Information published by the Government,
- in any case where—
- (i) a complaint is made by a person who claims to have sustained injustice in consequence of maladministration in connection with that action; or
 - (ii) notwithstanding that no complaint has been made to him, he is of the opinion that any person may have sustained injustice in consequence of maladministration in connection with that action. *(Replaced 74 of 1996 s. 6)*
- (1A) The Ombudsman may do all such things as are necessary for, or incidental or conducive to, the better performance of his functions, and in particular, but without prejudice to the generality of the foregoing, may—
- (a) acquire and hold property of any description if in the opinion of the Ombudsman such property is necessary for—

- (i) the accommodation of the Ombudsman or any person appointed under section 6(1);
 - (ii) the performance of any of his functions, and, subject to the terms and conditions upon which such property is held, dispose of it;
- (b) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation. *(Added 30 of 2001 s. 9)*
- (2) The powers conferred on the Ombudsman by this Ordinance shall be exercised in accordance with the provisions of this Ordinance but may be so exercised notwithstanding any provision in any law to the effect that any decision shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the organization whose decision it is shall be challenged, reviewed, quashed, or called in question. *(Amended 44 of 1994 s. 4; 74 of 1996 s. 11)*
- (3) *(Repealed 44 of 1994 s. 4)*

(Amended E.R. 2 of 2012)

8. Actions not subject to investigation

The Ombudsman shall not undertake or continue any investigation that relates to any action or matter specified in Schedule 2.

(Amended 44 of 1994 s. 5; 74 of 1996 s. 11)

9. Determination of questions relating to Ombudsman's authority

In determining whether to undertake, continue or discontinue an investigation, the Ombudsman shall, subject to the provisions of this Ordinance, act in accordance with his own discretion; and any question whether a complaint is duly made under this Ordinance shall be determined by the Ombudsman.

(Amended 74 of 1996 s. 11)

9A. Fees

- (1) The Ombudsman may charge any person such reasonable fee as he determines in respect of any service—
 - (a) approved by the Director of Administration; and
 - (b) provided by the Ombudsman to that person under this Ordinance, otherwise than in pursuance of an obligation imposed by this Ordinance.
- (2) The Ombudsman may recover any fee payable under subsection (1) as a civil debt due to him.

(Added 30 of 2001 s. 10)

Part IV

Complaints

(Format changes—E.R. 4 of 2018)

10. Restrictions on investigation of complaints

- (1) Notwithstanding the generality of the powers conferred on the Ombudsman by this Ordinance, the Ombudsman shall not undertake or continue an investigation into a complaint—
 - (a) if it relates to any action of which the complainant has had actual knowledge for more than 24 months before the complaint is received by the Ombudsman, unless the Ombudsman is satisfied that in the particular circumstances it is proper to conduct an investigation into a complaint not made within that period;
 - (b) if the complaint is made anonymously;
 - (c) if the complainant cannot be identified or traced;
 - (d) if the complaint is not made by the individual aggrieved himself or, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself, by his personal representative or by a member of his family or other individual suitable to represent him; *(Amended 44 of 1994 s. 6)*
 - (da) where the complaint is made on behalf of a body corporate, if the Ombudsman is not satisfied that the body corporate authorized the making of the complaint; *(Added 44 of 1994 s. 6)*
 - (db) if none of the following conditions is fulfilled in relation to the complaint—

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- (i) when the action which is the subject of the complaint was taken, the complainant was (in the case of an individual) resident in Hong Kong or (in the case of a body corporate) had a place of business in Hong Kong; or
 - (ii) the action which is the subject of the complaint was taken in relation to the person aggrieved while he was in Hong Kong; or
 - (iii) the action which is the subject of the complaint was taken in relation to any right or obligation which accrued or arose in Hong Kong; or (*Added 44 of 1994 s. 6*)
 - (e) if the complaint relates to any action in respect of which the complainant has or had—
 - (i) under any Ordinance, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to the Chief Executive, the Chief Executive in Council, any tribunal constituted by or under any Ordinance, or any board or other authority so constituted; or (*Amended 25 of 1998 s. 2*)
 - (ii) a remedy by way of proceedings in a court, other than by way of judicial review, or in any tribunal constituted by or under any Ordinance,

unless the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or to have resorted to that right or remedy.
 - (2) The Ombudsman may in his discretion decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that—

- (a) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Ombudsman was of the opinion that there had been no maladministration;
 - (b) the subject matter of the complaint is trivial;
 - (c) the complaint is frivolous or vexatious or is not made in good faith; or
 - (d) any investigation or further investigation is for any other reason unnecessary.
- (3) If the Ombudsman decides not to undertake or continue an investigation into a complaint he shall inform the complainant of that decision and of his reasons. *(Amended 44 of 1994 s. 6)*
(Amended 74 of 1996 s. 11)

11. Ombudsman may undertake or continue investigation notwithstanding withdrawal of complaint

Where the Ombudsman is of the opinion that it is in the public interest so to do, he may undertake or continue an investigation into a complaint notwithstanding that the complainant has withdrawn the complaint and, in any such case, the provisions of this Ordinance shall apply to the complaint and the complainant as if the complaint had not been withdrawn.

(Amended 74 of 1996 s. 11)

11A. Preliminary inquiries

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

(Added 30 of 2001 s. 11)

11B. Dealing with complaints by mediation

- (1) The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or only minor, maladministration.
- (2) The Ombudsman may authorize any person appointed under section 6(1) as a mediator in any mediation.
- (3) The person appointed to be the Ombudsman under section 3(3) shall not participate as a mediator in any mediation.
- (4) Participation in the mediation by the complainant and the organization affected is voluntary, and any party may withdraw at any time.
- (5) The mediator may terminate the mediation at any time.
- (6) If an attempt to deal with a complaint by mediation under this section is unsuccessful—
 - (a) the complaint is to be treated under this Part as if the mediation had not taken place; and
 - (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.
- (7) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation—
 - (a) shall not be admissible in evidence in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document related, consents to its admission;
 - (b) shall not be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of the mediation may be given against any person.

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

(Added 30 of 2001 s. 11)

Part V

Proceedings

(Format changes—E.R. 4 of 2018)

12. Proceedings of Ombudsman

- (1) Before investigating any action, the Ombudsman shall inform the head of the organization affected of his intention to conduct an investigation and may seek his comments.
(Amended 44 of 1994 s. 7)
- (2) Subsection (1) shall not apply where the Ombudsman thinks compliance is inappropriate in the particular circumstances of the case and, instead of complying with that subsection, informs the Chief Secretary for Administration of his intention to conduct an investigation. *(Amended L.N. 362 of 1997)*
- (3) Subject to the provisions of this Ordinance, the Ombudsman—
 - (a) may obtain any information, document or thing from such persons, and make such inquiries, as he thinks fit; and *(Amended 44 of 1994 s. 7)*
 - (b) may regulate his procedure in such manner as he thinks fit.
- (4) Every investigation shall be conducted in private and counsel and solicitors shall not have any right of audience before the Ombudsman, but may appear before him if he thinks fit.
- (5) It shall not be necessary for the Ombudsman to hold any hearing and, subject to subsection (6), no person shall be entitled to be heard by the Ombudsman.

- (6) If at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for him to make any report or recommendation that may criticize or adversely affect any officer, organization or person he shall give to the officer, head of the organization affected or person an opportunity to be heard. (*Amended 44 of 1994 s. 7*)

(*Amended 74 of 1996 s. 11*)

13. Evidence

- (1) Subject to section 14, the Ombudsman may summon before him—
- (a) any person, whether or not he is an officer of any organization, who in the opinion of the Ombudsman is able to give any information relating to any action that is being investigated by the Ombudsman; and
 - (b) any complainant,
- and may examine them and require them to furnish to him any information, and to produce any document or thing which, in the Ombudsman's opinion, whether or not it is in the custody or under the control of any organization, relates to that action and which may be in the possession or under the control of that person or, as the case may be, of the complainant. (*Amended 44 of 1994 s. 8*)
- (2) The Ombudsman may administer an oath for the purposes of an examination under subsection (1) if he thinks fit.
- (3) Except in relation to the subject of any certificate issued under section 14(3)—
- (a) no obligation to maintain secrecy or other restriction, imposed by law, upon the disclosure of any information, document or other thing, that is or has been in the possession or under the control of an organization, shall apply to its disclosure for the purposes of an

investigation under this Ordinance; and (*Amended 30 of 2001 s. 12*)

- (b) any requirement by the Ombudsman that any such information, document or thing as is referred to in paragraph (a) be disclosed or produced for the purposes of an investigation under this Ordinance shall be sufficient authority for its disclosure or production to the Ombudsman.
- (4) The Ombudsman may pay the reasonable expenses of complainants and witnesses incurred during the course of an investigation under this Ordinance.

(Amended 74 of 1996 s. 11)

14. Protection of witnesses, etc.

- (1) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things, for the purposes of this Ordinance, as witnesses have in civil proceedings in the High Court but, subject to subsection (3), any rule of law which authorizes or requires the withholding of any document or thing, or the refusal to answer any question, on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest, shall not apply in respect of any investigation.
- (2) Except on the trial of any person for perjury in respect of his sworn testimony, or for an offence under this Ordinance, no statement made or answer given by that or any other person in the course of any investigation shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of an investigation shall be given against any person.

- (3) Where the giving of any information or the answering of any question or the production of any document or thing—
 - (a) is the subject of a certificate by the Chief Executive that it might prejudice security, defence or international relations (including relations with any international organization) in respect of Hong Kong; or
 - (b) is the subject of a certificate by the Chief Secretary for Administration that it might— (*Amended L.N. 362 of 1997*)
 - (i) prejudice the investigation or detection of crime; or
 - (ii) involve the disclosure, without the consent of the Chief Executive, of the deliberations of the Executive Council,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced. (*Amended 74 of 1996 s. 11*)

(*Amended 25 of 1998 s. 2*)

15. Ombudsman and his staff to maintain secrecy

- (1) The Ombudsman and every person appointed under section 6 or 6A shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that— (*Amended 30 of 2001 s. 13*)
 - (a) arise from any investigation or complaint made to the Ombudsman; and
 - (b) come to their actual knowledge in the exercise of their functions. (*Replaced 74 of 1996 s. 7*)
- (2) Subsection (1) shall not apply so as to prevent the Ombudsman or any person appointed under section 6 or 6A from— (*Amended 74 of 1996 s. 11; 30 of 2001 s. 13*)

- (a) disclosing in the course of proceedings for an offence under the Ordinance, any matter relevant to those proceedings;
 - (b) reporting evidence of any crime to such authority as he considers appropriate;
 - (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Ombudsman or person so appointed—
 - (i) may be ground for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued. (*Replaced 74 of 1996 s. 7*)
- (3) The Ombudsman may disclose in any report made by him under this Ordinance any matter that in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations, other than a matter in respect of which the Chief Executive certifies that its disclosure might prejudice security, defence, or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest. (*Amended 74 of 1996 s. 11; 25 of 1998 s. 2*)
- (4) Any person who fails to comply with subsection (1) commits an offence and is liable to a fine of \$50,000 and to imprisonment for 2 years.

16. Reports by the Ombudsman

- (1) In any case in which, after making an investigation into any action, the Ombudsman is of the opinion that one or more of the following circumstances have been revealed—

- (a) there is evidence of any maladministration on the part of any officer of any organization; (*Amended 44 of 1994 s. 9*)
- (b) the matter should be referred to the head of the organization affected for further consideration; (*Amended 44 of 1994 s. 9*)
- (c) an omission should be rectified;
- (d) the action should be cancelled or varied;
- (e) any practice on which the action was based should be altered;
- (f) any view of the law on which the action was based should be reconsidered;
- (g) reasons should have been given for the action;
- (h) any other steps should be taken,
the Ombudsman may, if he thinks fit to do so, report his opinion and his reasons, together with— (*Amended 74 of 1996 s. 8*)
- (i) a statement of any remedy that he considers should be provided;
- (ii) a statement of any recommendation that he thinks fit to make;
- (iii) a copy of the comments made by or on behalf of the head of the organization affected on the finding, opinion or recommendation of the Ombudsman,
if any, to the head of the organization affected or, if the Ombudsman thinks it appropriate in the particular circumstances of the case not to report to the head of the organization, to the Chief Executive. (*Amended 44 of 1994 s. 9*)

- (2) The Ombudsman may specify in a report under subsection (1) to a head of the organization a time within which the Ombudsman is of the opinion it is reasonable in all the circumstances for the report to be acted upon. (*Amended 44 of 1994 s. 9*)
- (3) Where a report under subsection (1) to a head of the organization is not, in the opinion of the Ombudsman, adequately acted upon— (*Amended 44 of 1994 s. 9*)
 - (a) within the time specified in the report; or
 - (b) if no time is specified in the report, within such time as the Ombudsman is of the opinion is reasonable in all the circumstances,the Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive. (*Amended 25 of 1998 s. 2*)
- (4) The Ombudsman shall attach to every report submitted to the Chief Executive under subsection (3) a copy of any comments made thereon by or on behalf of the head of the organization affected. (*Amended 44 of 1994 s. 9; 25 of 1998 s. 2*)
- (5) In addition to making a report under subsection (1) or (3) the Ombudsman may, where he is of the opinion that a serious irregularity or injustice has taken place, make a further report stating his opinion and his reasons to the Chief Executive. (*Amended 25 of 1998 s. 2*)
- (6) Within a period of 1 month, or such longer period as the Chief Executive may determine, after receipt of the report from the Ombudsman under subsection (5), a copy of the report shall be laid before the Legislative Council. (*Amended 25 of 1998 s. 2*)

(*Amended 74 of 1996 s. 11*)

16A. Publication of reports

- (1) After making an investigation into any action the Ombudsman may, if he is of the opinion that it is in the public interest so to do, publish a report on the investigation in such manner as he thinks fit.
- (2) A report published under subsection (1) shall not disclose the identity of— *(Amended 30 of 2001 s. 14)*
 - (a) any person aggrieved;
 - (b) any complainant; or
 - (c) any officer of the organization whose action is the subject of the investigation or who is otherwise involved in the investigation. *(Amended 30 of 2001 s. 14)*
- (3) Nothing in subsection (2) shall be construed as preventing the Ombudsman from disclosing the name of an organization in a report published under subsection (1).

(Added 44 of 1994 s. 10. Amended 74 of 1996 s. 11)

17. Persons to be informed of result of investigation

- (1) In any case where he conducts an investigation upon complaint, the Ombudsman shall inform the complainant in such manner and at such time as he thinks fit, of— *(Amended 44 of 1994 s. 11; 74 of 1996 s. 11)*
 - (a) the result of his investigation;
 - (b) any report or recommendation made under section 16 and any comments made thereon by or on behalf of the head of the organization affected; *(Amended 44 of 1994 s. 11)*
 - (c) such comments on the matter as he thinks fit to make; and
 - (d) such comments, if any, as the Chief Executive may require him to forward to the complainant. *(Amended 25 of 1998 s. 2)*

- (2) In any case where he conducts an investigation, the Ombudsman shall, unless he has already made a report under section 16(1) to the head of the organization affected, inform him, in such manner and at such time as he thinks fit, of the result of his investigation. (*Amended 44 of 1994 s. 11; 74 of 1996 s. 11*)
- (3) (*Repealed 44 of 1994 s. 11*)
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Part VI

Supplementary

(Format changes—E.R. 4 of 2018)

18. Privilege

For the purposes of the law of defamation, absolute privilege shall be attached to the publication of any matter—

- (a) by the Ombudsman or his staff to any person for the purpose of an investigation under this Ordinance, or for the purposes of section 16, 16A or 17 or section 3(4)(a) of Schedule 1A. *(Amended 44 of 1994 s. 12; 74 of 1996 s. 11; 30 of 2001 s. 15)*
- (b) *(Repealed 44 of 1994 s. 12)*

18A. Immunity

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

(Added 30 of 2001 s. 16)

19. Duty of head of organization

An investigation shall not affect any action taken by the head of the organization affected, or his power or duty to take further action with respect to any decision which is subject to the investigation.

(Amended 44 of 1994 s. 13)

20. Power of entry on premises

- (1) For the purposes of this Ordinance, but subject to subsections (2) and (3), the Ombudsman may at any time—
 - (a) enter any premises occupied, managed or controlled by an organization; (*Amended 44 of 1994 s. 14*)
 - (b) inspect the premises; and
 - (c) subject to the provisions of sections 13 and 14, carry out in the premises any investigation which is within his jurisdiction.
 - (2) Before entering any such premises the Ombudsman shall notify the head of the organization by which the premises are occupied, managed or controlled. (*Amended 44 of 1994 s. 14*)
 - (3) The Chief Executive may from time to time, by notice to the Ombudsman, exclude any specified premises or class of premises from the application of subsection (1) if he is satisfied that prejudice might otherwise be caused to security, defence, or international relations (including relations with any international organization) in respect of Hong Kong. (*Amended 25 of 1998 s. 2*)
- (*Amended 74 of 1996 s. 11*)

21. Delegation of powers and duties of the Ombudsman

- (1) Subject to subsection (2), the Ombudsman may, by notice in the Gazette, delegate to any person appointed under section 6 any of his powers under this Ordinance, except the power of delegation in this section and, where it appears to the Ombudsman that he has or may have an interest in any matter which is the subject of an investigation under section 7, shall so delegate his powers and shall not undertake personally or continue that investigation or report thereon. (*Amended 44 of 1994 s. 15*)
- (2) Except where the Ombudsman is required by subsection (1) to delegate his powers under this Ordinance, any power or duty

to make a report under this Ordinance shall not be delegated by him; but where he is so required any duty imposed by this Ordinance on the Ombudsman shall be imposed instead on the person to whom the Ombudsman's powers under subsection (1) are delegated.

(Amended 74 of 1996 s. 11)

22. *(Repealed 30 of 2001 s. 17)*

23. Offences

Any person who—

- (a) without lawful excuse, obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Ordinance;
- (b) without lawful excuse, fails to comply with any lawful requirement of the Ombudsman or any other person under this Ordinance; or
- (c) makes a statement which he knows to be false or does not believe to be true, or otherwise knowingly misleads the Ombudsman or any other person in the exercise of his powers under this Ordinance,

commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

(Amended 74 of 1996 s. 11)

24. Power to amend Schedules

The Chief Executive in Council may by order published in the Gazette amend Schedules 1 and 1A.

(Replaced 44 of 1994 s. 16. Amended 25 of 1998 s. 2; 30 of 2001 s. 18)

25. Transitional

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Part VI

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Section 25

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A complaint under this Ordinance may be made in respect of matters which arose before the commencement of this Ordinance and for the purposes of section 10(1)(a) any time elapsing between the date of the enactment and the date of the commencement of this Ordinance (but not any time before the first of those dates) shall be disregarded.

Schedule 1

[ss. 2(1), 7(1) & 24]

(Amended L.N. 168 of 2006)

Organizations to which this Ordinance Applies

(Format changes—E.R. 2 of 2012)

Part 1[#]

(Amended 44 of 1994 s. 17; 74 of 1996 s. 9)

Agriculture, Fisheries and Conservation Department. *(Replaced L.N. 331 of 1999)*

Airport Authority. *(Added L.N. 155 of 1996)*

All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility. *(Replaced L.N. 155 of 1996)*

Architectural Services Department.

Audit Commission. *(Amended L.N. 362 of 1997)*

Auxiliary Medical Service (as raised and maintained under section 3 of the Auxiliary Medical Service Ordinance (Cap. 517)). *(Added L.N. 217 of 2009)*

*Auxiliary Medical Service (Government department). *(Added L.N. 155 of 1996. Amended 57 of 1997 s. 34; L.N. 217 of 2009)*

Buildings Department. *(Replaced L.N. 282 of 1993)*

Census and Statistics Department.

Civil Aid Service (as raised and maintained under section 3 of the Civil Aid Service Ordinance (Cap. 518)). (*Added L.N. 217 of 2009*)

⁺Civil Aid Service (Government department). (*Added L.N. 155 of 1996. Amended 58 of 1997 s. 34; L.N. 217 of 2009*)

Civil Aviation Department.

Civil Engineering and Development Department. (*Replaced L.N. 183 of 1992. Amended L.N. 104 of 2004*)

Companies Registry. (*Added 8 of 1993 s. 28*)

Competition Commission. (*Added 14 of 2012 s. 176*)

Consumer Council. (*Added L.N. 217 of 2009*)

Correctional Services Department.

Customs and Excise Department.

Department of Health. (*Added L.N. 414 of 1989*)

Department of Justice. (*Amended L.N. 362 of 1997*)

Drainage Services Department. (*Added L.N. 357 of 1989*)

Electrical and Mechanical Services Department.

Employees Retraining Board. (*Added L.N. 139 of 1999*)

Environmental Protection Department.

Equal Opportunities Commission. (*Added 30 of 2001 s. 19*)

Estate Agents Authority. (*Added L.N. 217 of 2009*)

Financial Reporting Council. (*Added 18 of 2006 s. 81*)

Fire Services Department.

Food and Environmental Hygiene Department. (*Added 78 of 1999 s. 7*)

General Office of the Chief Executive's Office. (*Added L.N. 155 of 1996. Amended 25 of 1998 s. 2*)

Government Flying Service. (*Added L.N. 242 of 1993*)

Government Laboratory.

Government Logistics Department. (*Replaced L.N. 164 of 2003*)

Government Property Agency. (*Added L.N. 181 of 1991*)

Government Secretariat.

Highways Department.

Home Affairs Department. (*Replaced L.N. 155 of 1996*)

Hong Kong Arts Development Council. (*Added 26 of 1995 s. 20*)

Hong Kong Housing Authority. (*Added 44 of 1994 s. 17*)

Hong Kong Housing Society. (*Added L.N. 155 of 1996*)

Hong Kong Monetary Authority. (*Added L.N. 97 of 1993*)

Hong Kong Observatory. (*Amended 25 of 1998 s. 2; L.N. 168 of 2006*)

Hong Kong Sports Institute Limited. (*Added L.N. 5 of 2005*)

Hospital Authority. (*Added L.N. 420 of 1991*)

Housing Department.

Immigration Department.

Information Services Department.

Inland Revenue Department.

Insurance Authority. (*Added 12 of 2015 s. 117*)

Intellectual Property Department. (*Added L.N. 236 of 1990*)

Invest Hong Kong. (*Added L.N. 152 of 2000*)

Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service. (*Added L.N. 253 of 2001*)

Kowloon-Canton Railway Corporation. (*Added 44 of 1994 s. 17*)

Labour Department.

Land Registry. (*Added 8 of 1993 s. 28*)

Lands Department. (*Added L.N. 282 of 1993*)

Legal Aid Department.

Legislative Council Secretariat. (*Replaced 14 of 1994 s. 24*)

Leisure and Cultural Services Department. (*Added 78 of 1999 s. 7*)

Mandatory Provident Fund Schemes Authority. (*Added L.N. 139 of 1999*)

Marine Department.

Office of the Communications Authority. (*Added L.N. 242 of 1993. Amended 17 of 2011 s. 28*)

Official Receiver's Office. (*Added L.N. 183 of 1992*)

Planning Department. (*Added L.N. 414 of 1989*)

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Post Office.

Privacy Commissioner for Personal Data. *(Added 30 of 2001 s. 19)*

Property Management Services Authority. *(Added 10 of 2016 s. 68)*

Radio Television Hong Kong.

Rating and Valuation Department.

Registration and Electoral Office. *(Added L.N. 251 of 1994)*

Securities and Futures Commission. *(Added 44 of 1994 s. 17)*

Social Welfare Department.

The Hong Kong Examinations and Assessment Authority. *(Replaced 23 of 2002 s. 27)*

Trade and Industry Department. *(Replaced L.N. 173 of 2000)*

Transport Department.

Treasury.

University Grants Committee, Secretariat. *(Amended L.N. 35 of 1995)*

Urban Renewal Authority. *(Replaced 63 of 2000 s. 38)*

Vocational Training Council. *(Added L.N. 155 of 1996)*

Water Supplies Department.

West Kowloon Cultural District Authority. *(Added 27 of 2008 s. 43)*

Working Family and Student Financial Assistance Agency. *(Added L.N. 40 of 2015)*

(Amended L.N. 76 of 1989; L.N. 373 of 1989; 8 of 1993 s. 28; 78 of 1999 s. 7; 13 of 2000 s. 65; L.N. 152 of 2000; 63 of 2000 s. 38; L.N. 253 of 2001; 3 of 2003 s. 28; L.N. 164 of 2003; L.N. 104 of 2004; 11 of 2004 s. 18; L.N. 168 of 2006; 17 of 2011 s. 28; L.N. 40 of 2015)

Part 2

Independent Commission Against Corruption.

Hong Kong Auxiliary Police Force. *(Amended 25 of 1998 s. 2)*

Hong Kong Police Force. *(Amended 25 of 1998 s. 2)*

Secretariat of the Public Service Commission.

(Part 2 added 74 of 1996 s. 9. Amended 33 of 2008 s. 48)

Editorial Note:

“Education Department” was repealed from Part 1 of this Schedule by the Education Reorganization (Miscellaneous Amendments) Ordinance 2003 (3 of 2003). For the related saving and transitional provisions, see section 29 of the Ordinance.

* Please see the saving provisions contained in section 33(4) of Cap. 517.

+ Please see the saving provisions contained in section 33(4) of Cap. 518.

Schedule 1A

[ss. 3(7), 18(a) & 24]

Finances, etc. of Ombudsman

(Format changes—E.R. 4 of 2018)

1. Resources of Ombudsman

The resources of the Ombudsman shall consist of—

- (a) all money appropriated by the Legislative Council under section 6(3) of this Ordinance;
- (b) all other money and property, including fees, interest and accumulations of income received by the Ombudsman.

2. Investment of surplus funds

- (1) Subject to subsection (2), the Ombudsman may invest his funds that are not immediately required to be expended.
- (2) The Ombudsman shall not invest funds pursuant to subsection (1) except in such form of investment as the Director of Administration, after consulting with the Secretary for Financial Services and the Treasury, approves. *(Amended L.N. 106 of 2002)*

3. Accounts, audit and annual report of Ombudsman

- (1) The Ombudsman shall cause proper accounts to be kept of all his financial transactions.
- (2) The Ombudsman shall, as soon as practicable after the end of a financial year, prepare a statement of the accounts of the

Ombudsman, which statement shall include an income and expenditure account and a balance sheet.

- (3) The Ombudsman shall appoint an auditor who shall, as soon as practicable after the end of a financial year, audit the accounts required under subsection (1) and the statement of accounts required under subsection (2) and shall submit a report on the statement to the Ombudsman.
- (4) The Ombudsman shall, as soon as practicable and in any case within 6 months after the end of a financial year, furnish—
 - (a) a report on his activities including a general survey of developments, during that year, in respect of matters falling within the scope of his functions;
 - (b) a copy of the statement of accounts required under subsection (2); and
 - (c) the auditor's report on the statement,to the Chief Executive who shall cause them to be tabled in the Legislative Council.

4. Director of Audit's examination

- (1) The Director of Audit may, in respect of any financial year, conduct an examination into the economy, efficiency and effectiveness with which the Ombudsman has expended his resources in performing his functions and exercising his powers.
- (2) Subject to subsection (3), the Director of Audit shall have a right of access at all reasonable times to all such documents as he may reasonably require for conducting an examination under this section and shall be entitled to require from any person holding or being accountable for any such document

such information and explanation as he considers reasonably necessary for that purpose.

- (3) Subsection (2) applies only to documents in the custody and control of the Ombudsman.
- (4) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.
- (5) Subsection (1) shall not operate to entitle the Director of Audit to question the merits of the policy objectives of the Ombudsman.

5. Exemption from taxation

- (1) The Ombudsman shall be exempt from taxation under the Inland Revenue Ordinance (Cap. 112).
- (2) For the avoidance of doubt, it is declared that subsection (1) does not apply to or in relation to any salary or other benefit referred to in section 3(6) of this Ordinance payable out of the general revenue.

(Schedule 1A added 30 of 2001 s. 20)

Schedule 2

[s. 8]

Actions Not Subject to Investigation

(Format changes—E.R. 4 of 2018)

1. Any action taken in matters certified by the Chief Executive as affecting security, defence or international relations (including relations with any international organization) in respect of Hong Kong. *(Amended 25 of 1998 s. 2)*
2. The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Hong Kong, including any decision whether or not to prosecute any person for an offence.
3. Any exercise of the power by the Chief Executive to pardon persons convicted of criminal offences or commute their penalties. *(Replaced 25 of 1998 s. 2)*
4. Any action taken in relation to contractual or other commercial transactions but excluding procedures adopted in inviting tenders, determining the qualification of persons entitled to tender and the selection of the successful tenderer.
5. Any action taken in respect of appointments or removals, pay, conditions of service, discipline, pension, superannuation or other personnel matters, in relation to—
 - (a) service in any office or employment under the Government or under any organization; or

- (b) service in any office, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in the Chief Executive or any organization. *(Amended 44 of 1994 s. 18; 25 of 1998 s. 2)*
6. The grant of honours, awards or privileges within the gift of the Government. *(Amended 25 of 1998 s. 2)*
7. Any action taken personally by the Chief Executive. *(Amended 25 of 1998 s. 2)*
8. Any decision concerning the imposition or variation of any condition of granting, extending or renewing any interest in Government land. *(Added 44 of 1994 s. 18. Amended 25 of 1998 s. 2; 29 of 1998 s. 105)*
9. Any action taken in relation to the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs issued by the Securities and Futures Commission. *(Added 44 of 1994 s. 18. Amended 28 of 2012 ss. 912 & 920)*
10. Any action taken by the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force or the Hong Kong Police Force in relation to the prevention, detection or investigation of any crime or offence, whether or not the action is taken solely by any one of these organizations, or jointly by more than one of these organizations or by any one or more of them together with any other organizations or persons. *(Added 74 of 1996 s. 10. Amended 25 of 1998 s. 2)*