

**INDEPENDENT POLICE COMPLAINTS
COUNCIL ORDINANCE**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 33 OF 2008

L.S.

Donald TSANG
Chief Executive
17 July 2008

An Ordinance to incorporate the existing Independent Police Complaints Council; to provide for the Council's functions in monitoring the handling and investigation of reportable complaints by the Commissioner of Police; to provide for the Council's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters.

[]

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Independent Police Complaints Council Ordinance.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

3. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “appointed member” (委任成員) means a member of the Council referred to in section 5(1)(c), and includes a person appointed under section 5 of Schedule 1 to act as an appointed member;
- “categorization” (歸類) means the categorization by the Commissioner of a complaint as—
- (a) a reportable complaint; or
 - (b) a notifiable complaint;
- “Chairman” (主席) means the Chairman of the Council referred to in section 5(1)(a), and includes a person appointed under section 5 of Schedule 1 to act as the Chairman;
- “classification” (分類) means the classification after investigation by the Commissioner of a reportable complaint as one that is—
- (a) substantiated;
 - (b) substantiated other than reported;
 - (c) not fully substantiated;
 - (d) unsubstantiated;
 - (e) false;
 - (f) no fault;
 - (g) withdrawn;
 - (h) not pursuable;
 - (i) curtailed;
 - (j) informally resolved; or
 - (k) of such other description as agreed between the Council and the Commissioner;
- “Commissioner” (處長) means the Commissioner of Police;
- “committee” (委員會) includes any panel or sub-group established by the Council under section 17 of Schedule 1;
- “complainant” (投訴人) means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;
- “Council” (監警會) means the body corporate established by section 4;
- “function” (職能) includes a power and a duty;
- “Legal Adviser” (法律顧問) means the Legal Adviser to the Council appointed under section 6(1);
- “material” (材料) includes any document or record in any form and any article or substance;
- “member of the police force” (警隊成員) includes a public officer attached to the police force;

- “mentally incapacitated person” (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);
- “notifiable complaint” (須知會投訴) means a complaint categorized as a notifiable complaint in accordance with section 14;
- “observer” (觀察員) means a person appointed to be an observer under section 33;
- “police conduct” (警方行為) means the conduct, practice or procedure referred to in section 11(a);
- “police force” (警隊) means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);
- “reportable complaint” (須匯報投訴) means—
- (a) a complaint categorized as a reportable complaint in accordance with section 11; or
 - (b) a request for review treated as a reportable complaint in accordance with section 13;
- “request for review” (覆核要求) means a request for reviewing the classification of a reportable complaint referred to in section 13;
- “Secretary-General” (秘書長) means the Secretary-General to the Council appointed under section 6(1);
- “Vice-Chairman” (副主席) means a Vice-Chairman of the Council referred to in section 5(1)(b), and includes a person appointed under section 5 of Schedule 1 to act as a Vice-Chairman.
- (2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.
- (3) In sections 8(1)(b), 19(1)(d), 26 and 40(3)(b), a reference to any action taken or to be taken in respect of a member of the police force includes a decision that no action be taken against that member.

PART 2

INCORPORATION OF INDEPENDENT POLICE COMPLAINTS COUNCIL

4. Incorporation of Council

- (1) There is hereby established a body corporate known as—
 - (a) “Independent Police Complaints Council” in English; and
 - (b) “獨立監察警方處理投訴委員會” in Chinese.
- (2) The Council has perpetual succession and may sue and be sued in its English or Chinese name.
- (3) The Council is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

5. Membership of Council

- (1) The Council consists of the following members—
 - (a) a Chairman appointed by the Chief Executive;
 - (b) 3 Vice-Chairmen appointed by the Chief Executive; and
 - (c) not less than 8 other members appointed by the Chief Executive.
- (2) The following persons are not eligible for appointment under subsection (1)—
 - (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department; and
 - (b) a person who was a member of the police force.

6. Appointment of Secretary-General, Legal Adviser and other employees

- (1) The Council must appoint a Secretary-General and a Legal Adviser on terms of employment approved by the Chief Executive on the advice of the Council.
- (2) The Council may appoint, on terms of employment determined by the Council, such other employees as the Council requires to assist it in performing its functions.
- (3) The Council may engage any person for his technical or professional services in such manner and on such terms as it thinks fit.

7. Schedule 1 applicable to Council

Schedule 1 has effect with respect to the members, proceedings, committees and finances of, and the execution of documents by, and other miscellaneous matters of, the Council.

PART 3

FUNCTIONS OF COUNCIL

8. Functions of Council

- (1) The functions of the Council are—
 - (a) to observe, monitor and review the handling and investigation of reportable complaints by the Commissioner, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of the handling or investigation of reportable complaints;

- (b) to monitor actions taken or to be taken in respect of any member of the police force by the Commissioner in connection with reportable complaints, and to advise (as the Council considers appropriate) the Commissioner or the Chief Executive or both of them of its opinion on such actions;
 - (c) to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure;
 - (d) to review anything submitted to it by the Commissioner pursuant to this Ordinance;
 - (e) to promote public awareness of the role of the Council; and
 - (f) (without limiting the generality of the foregoing) any function conferred on it by or under this or any other Ordinance.
- (2) The Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

Division 1—Functions relating to Commissioner’s Categorization of Complaints

9. Commissioner to submit lists of complaints

- (1) The Commissioner must submit to the Council at such intervals, and in such manner, as the Commissioner and the Council may agree—
- (a) a list of reportable complaints; and
 - (b) a list of notifiable complaints.
- (2) A list submitted under subsection (1)(a) must include a brief description of all reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted.
- (3) A list submitted under subsection (1)(b) must include—
- (a) a brief description of all notifiable complaints that the Commissioner has received since the end of the period covered by the last list so submitted;
 - (b) the reasons for categorizing the complaints as notifiable complaints; and
 - (c) in relation to a belated complaint (as defined in section 12(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground.

10. Certain complaints not to be included in lists under section 9(1)

A list under section 9(1)(a) or (b) must not include a complaint that—

- (a) a person makes in his official capacity as a member of the police force;
- (b) arises from the issue of a summons and solely relates to the question of whether the summons is validly issued;
- (c) arises from the issue of any notice for the imposition of a fixed penalty under any enactment and solely relates to the question of whether the notice is validly issued; or
- (d) a person is empowered to investigate pursuant to any function conferred on the person by any other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

11. Complaints categorized as reportable complaints

Subject to sections 10, 12 and 13, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

- (a) relates to—
 - (i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, whether or not he identified himself as such a member;
 - (ii) the conduct of a member of the police force who identified himself as such a member while off duty; or
 - (iii) any practice or procedure adopted by the police force;
- (b) is not vexatious or frivolous and is made in good faith;
- (c) is made by or on behalf of a complainant directly affected by the police conduct;
- (d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and
- (e) (if made by a person on behalf of a complainant) is made in accordance with section 15.

12. Categorization of belated complaints

(1) Except as provided in subsection (2), a belated complaint must not be categorized as a reportable complaint.

(2) A belated complaint must be categorized as a reportable complaint if—

- (a) it is serious in nature; and
- (b) but for subsection (1), it would be categorized as a reportable complaint in accordance with section 11.

(3) In this section, “belated complaint” (逾期投訴) means a complaint that is made to the Commissioner after the expiration of—

- (a) 24 months from the date of the incident giving rise to the complaint; or
- (b) (where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in paragraph (a)) 12 months from the date of the final determination of such proceedings,

whichever is later.

13. Requests for review treated as reportable complaints

(1) Subject to subsection (2), a request for review made to the Commissioner for reviewing the classification of a reportable complaint (“the relevant classification”) is to be treated as a reportable complaint only if the request for review—

- (a) is not vexatious or frivolous;
- (b) is made in good faith; and
- (c) (if made by a person on behalf of a complainant) is made in accordance with section 15.

(2) A request for review must not seek for the review of a reportable complaint that is classified as “informally resolved”.

(3) On such review, the Commissioner is not required to conduct a fresh or further investigation of any fact or evidence considered in the determination of the relevant classification unless the person who makes the request for review puts forward a point of view on the analysis of that fact or evidence and—

- (a) the Commissioner did not consider such a point of view in his determination of the relevant classification;
- (b) the point of view, if established after a fresh or further investigation of that fact or evidence, may result in a change of the relevant classification; and
- (c) the consideration of the point of view reasonably requires a fresh or further investigation of that fact or evidence.

**14. Complaints categorized as
notifiable complaints**

A complaint received by the Commissioner must be categorized as a notifiable complaint if it is neither a reportable complaint nor a complaint referred to in section 10.

**15. Making complaint or request for review on
behalf of complainant**

(1) For the purposes of this Ordinance, a person (“the representative”) may make a complaint or a request for review on behalf of a complainant only if—

- (a) the complainant is below the age of 16 years at the time when the complaint or request for review (as the case may be) is made and the representative is his relative or guardian;
- (b) the complainant is a mentally incapacitated person or is unable to make the complaint or request for review (as the case may be) himself due to death or illness, and the representative is—
 - (i) a relative of the complainant; or
 - (ii) a guardian (as defined in section 2(1) of the Mental Health Ordinance (Cap. 136)) of the complainant; or
- (c) the representative has written authorization from the complainant to make the complaint or request for review (as the case may be) on behalf of the complainant.

(2) For the purposes of subsection (1), “relative” (親屬) means—

- (a) a spouse, child, parent, grandparent or grandchild; or
- (b) a person who is, or is the issue of, a brother, sister, uncle or aunt.

(3) In deducing any relationship for the purposes of subsections (1) and (2)—

- (a) an adopted person is treated as the child of the person or persons by whom he was adopted;
- (b) any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child of a person as the child of that person; and
- (c) an illegitimate child is treated as a legitimate child of his mother and reputed father.

**16. Reconsideration of categorization
by Commissioner**

(1) If the Council considers that a complaint included in a list of notifiable complaints under section 9 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—

- (a) have regard to such opinion; and
- (b) reconsider the categorization of the complaint.

(2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.

(3) For the purpose of performing the Council's function under subsection (1), the Council may require the Commissioner to provide—

- (a) explanations to support the categorization of a complaint as a notifiable complaint;
- (b) in relation to a belated complaint (as defined in section 12(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, explanations to support that ground; and
- (c) information or material in support of the explanations.

**Division 2—Functions relating to Investigation or Interim
Investigation Reports on Reportable Complaints**

**17. Commissioner to submit investigation
reports on reportable complaints**

(1) The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report.

(2) Subject to subsection (3), an investigation report submitted under subsection (1) must contain—

- (a) a summary of the investigation;
- (b) a finding of facts in relation to the complaint and the evidence in support of the finding;
- (c) the classification of the complaint, and the reasons for the classification;
- (d) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
- (e) such information as the Commissioner thinks necessary; and
- (f) such other information as the Commissioner and the Council may agree.

(3) An investigation report on a reportable complaint classified as informally resolved must—

(a) contain—

- (i) a summary of the process of informal resolution of the complaint;
- (ii) an account of the incident giving rise to the complaint as described by the complainant;
- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
- (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
- (v) such information as the Commissioner thinks necessary; and
- (vi) such other information as the Commissioner and the Council may agree; and

(b) explain the reasons for resolving the complaint by informal resolution.

(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report.

18. Commissioner to submit interim investigation reports on reportable complaints

(1) If the investigation of a reportable complaint is not completed within—

- (a) 6 months from the date of receipt of the complaint; or
- (b) such shorter period as the Commissioner and the Council may agree,

then, the Commissioner must, as soon as practicable after the expiry of those 6 months or that shorter period, submit to the Council an interim investigation report.

(2) Until the completion of the investigation, the Commissioner must submit to the Council further interim investigation reports after the expiry of every successive period of—

- (a) 6 months; or
- (b) such shorter period as the Commissioner and the Council may agree.

(3) An interim investigation report submitted under subsection (1) or (2) must—

- (a) contain a summary of the progress of the investigation; and

(b) explain the reasons for not being able to complete the investigation within the 6 months' period or such shorter period covered by the report.

(4) The Council may advise the Commissioner of its opinion on an interim investigation report.

19. Council may advise Commissioner of its opinion or recommendation on investigation report

(1) The Council may, in relation to an investigation report submitted under section 17, advise the Commissioner of—

- (a) its recommendation on the classification of the complaint;
- (b) its recommendation on the Commissioner's handling or investigation of the complaint;
- (c) its recommendation on any fault or deficiency identified in any practice or procedure adopted by the police force;
- (d) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with the complaint; or
- (e) its recommendation on the report other than those mentioned in paragraphs (a), (b) and (c).

(2) If an investigation report is amended in response to the Council's recommendations referred to in subsection (1), the Commissioner must submit the report as amended to the Council as soon as practicable.

(3) The Council may, if it considers appropriate, submit any part of its opinion or recommendation referred to in subsection (1) to the Chief Executive for consideration.

20. Council may conduct interview

(1) At any time after an investigation report has been submitted to the Council under section 17, the Council may, for the purpose of considering the report, interview any person who is or may be able to provide information or other assistance to the Council in relation to the report.

(2) At any time after an interim investigation report has been submitted to the Council under section 18, the Council may, with the consent of the Commissioner and for the purpose of considering the report, interview any person who is or may be able to provide information or other assistance to the Council in relation to the report.

(3) Unless the Commissioner is reasonably of the opinion that an interview under subsection (2) would be likely to prejudice the investigation of any crime or any complaint made to him, he must give his consent to the interview.

(4) An interview under this section must be conducted in private.

(5) Subject to subsection (7), the Council may decide who may be present at an interview.

(6) A solicitor or counsel does not have a right of audience before the Council at an interview unless he is the person who is interviewed under this section.

(7) Where a person who is interviewed under this section (“that person”) is below the age of 16 years, or is known to the Council to be a mentally incapacitated person, that person must be interviewed in the presence of—

(a) his parent or guardian;

(b) an adult who has an interest in the welfare of that person and is, in the opinion of the Council, an appropriate person to be present at the interview; or

(c) such other person as the Council may decide in any particular case.

(8) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel at an interview under this section.

21. Record of interview

(1) The Council must make a record of every interview under section 20, and the record is to be kept for such period as may be necessary for the performance of its functions under this Ordinance.

(2) The record may be used in the circumstances provided for in section 40(2) but not otherwise.

Division 3—Other Functions relating to Reportable Complaints etc.

22. Council may require Commissioner to provide information etc. relating to reportable complaints

(1) The Council may require the Commissioner—

(a) to provide any information or material relating to a reportable complaint, including but not limited to—

(i) any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint; and

(ii) any video recording of the interview; and

(b) to clarify any fact, discrepancy or findings relating to a reportable complaint.

(2) In this section, “video recording” (錄影紀錄) means a recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

23. Council may require Commissioner to investigate reportable complaints

(1) Subject to subsection (2), the Council may require the Commissioner to investigate (whether or not there has been any previous investigation) a reportable complaint.

(2) If the reportable complaint is a request for review, then, subject to section 13(3), the Council may require the Commissioner to investigate (whether or not there has been any previous investigation) any matter relating to the request for review only if—

(a) in the case of the first request for review in respect of a reportable complaint, the request for review is made within 30 days after—

(i) the complainant; or

(ii) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,

was notified by the Commissioner of the classification of the reportable complaint;

(b) in the case of a second or subsequent request for review in respect of a reportable complaint, the request for review is made within 30 days after—

(i) the complainant; or

(ii) (where the last request for review was made by a person on behalf of the complainant) the person who made the last request for review,

was notified by the Council of the outcome of the Commissioner’s last review of the classification of the reportable complaint; or

(c) in the case of a request for review made after the expiry of the period applicable to the request for review under paragraph (a) or (b), the Council is of the opinion that exceptional circumstances exist in relation to the request for review.

(3) In determining whether exceptional circumstances exist for the purposes of subsection (2)(c), the Council may take into account any factor including, but not limited to, the following—

(a) whether there is any fresh evidence in respect of the request for review; and

- (b) whether there are any justifiable reasons for making the request for review after the expiry of the period applicable to the request for review under subsection (2)(a) or (b).

24. Notification of classification of reportable complaint and result of review

(1) In the case of a reportable complaint that is not a request for review, the Commissioner must notify—

(a) the complainant; or

(b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,

of the classification of the reportable complaint and the reasons for the classification.

(2) In the case of a reportable complaint that is a request for review, the Council must notify—

(a) the complainant; or

(b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,

of the result of the review and the reasons for the result.

(3) Subsections (1) and (2) do not apply where the complainant or the person has indicated to the Commissioner or the Council that he does not wish to be so notified.

(4) In determining the time at which the complainant or the person is notified of such matters as required under subsection (1) or (2), the following provisions apply—

(a) if the notification is left at his address, the notification is effected when it is so left;

(b) if the notification is sent by post to his address, the notification is effected when it would in the ordinary course of post be delivered to that address;

(c) if the notification is sent by facsimile transmission to his facsimile number, the notification is effected when it would in the ordinary course of such transmission be received at that number; or

(d) if the notification is sent by electronic mail transmission to his electronic mail address, the notification is effected when it would in the ordinary course of such transmission be received at that address.

(5) In subsection (4), references to his address, his facsimile number or his electronic mail address mean the address, facsimile number or electronic mail address (as the case may be) provided by the complainant or the person to the Commissioner or the Council as a means of contacting him in relation to the reportable complaint.

25. Members of Council may attend interviews and observe collection of evidence

(1) A member of the Council may at any time and without prior appointment—

- (a) attend an interview conducted by the Commissioner in respect of a reportable complaint; and
- (b) observe the collection of evidence by the Commissioner in the investigation of a reportable complaint.

(2) Where a member of the Council attends the interview or observes the collection of evidence, sections 37 and 38 apply, with necessary modifications, to that member as if a reference to an observer in those sections were a reference to that member.

26. Council may require explanation in relation to actions taken etc. in connection with reportable complaints

The Council may require the Commissioner to provide an explanation in relation to any action taken or to be taken in respect of a member of the police force by the Commissioner in connection with any reportable complaint.

27. Council may require Commissioner to submit statistics and reports

The Council may require the Commissioner—

- (a) to compile and submit to the Council statistics of the types of conduct of members of the police force that have led to reportable complaints; and
- (b) to submit to the Council a report on any action taken or to be taken by the Commissioner in respect of a recommendation of the Council made under section 8(1)(a) or (c).

28. Commissioner to consult Council on orders and manuals relating to handling or investigation of reportable complaints

- (1) The Commissioner must consult the Council on—
 - (a) any proposed new order or manual of the police force that relates to the handling or investigation of reportable complaints; or
 - (b) any significant amendment proposed to be made to—
 - (i) the police general orders made under section 46 of the Police Force Ordinance (Cap. 232);
 - (ii) the headquarter orders issued under section 47 of that Ordinance;
 - (iii) the Hong Kong Police Force Procedures Manual; or
 - (iv) any other orders or manuals of the police force, in so far as the amendment relates to the handling or investigation of reportable complaints.
- (2) For the purposes of subsection (1)(b), an amendment is significant if it materially changes—
 - (a) the meaning or interpretation of; or
 - (b) the procedures to be followed under,any provision of the order or manual of the police force.

29. Commissioner to comply with requirements of Council

- (1) Notwithstanding section 4 of the Police Force Ordinance (Cap. 232), the Commissioner must comply with any requirement made by the Council under this Ordinance unless the Secretary for Security certifies that compliance with the requirement would be likely to prejudice—
 - (a) the security of Hong Kong; or
 - (b) the investigation of any crime.
- (2) A certificate signed by the Secretary for Security certifying the matter referred to in subsection (1)(a) or (b) is conclusive evidence as to the matter so certified.

30. Report to Chief Executive

The Council may make such reports to the Chief Executive as it thinks necessary.

Division 4—Council’s Powers relating to its Affairs

31. Council may charge fees

The Council may charge reasonable fees for providing copies of, or extracts from, documents or publications of the Council.

32. Council may hold property, enter into contracts and borrow money

For the purposes of this Ordinance, the Council may—

- (a) acquire, hold and dispose of movable or immovable property;
- (b) enter into contracts or other agreements; and
- (c) with the approval of the Financial Secretary, borrow money on security or other conditions.

PART 4

OBSERVERS SCHEME

33. Appointment of observers

(1) Subject to subsection (2), the Secretary for Security may appoint such person as he thinks fit to be an observer.

(2) The following persons are not eligible for appointment as observers—

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) the Secretary-General, the Legal Adviser or any other employee of the Council; and
- (c) a person who was a member of the police force.

34. Function of observers

The function of an observer is to assist the Council to observe, in accordance with the provisions of this Part, the manner in which the Commissioner handles or investigates reportable complaints.

35. Schedule 2 applicable to observers

Schedule 2 has effect with respect to observers.

**36. Prior notification of interview
and collection of evidence**

(1) In so far as practicable, the Commissioner must, before he conducts—

- (a) an interview in respect of a reportable complaint; or
- (b) any collection of evidence in the investigation of a reportable complaint,

notify the Council of the interview or collection of evidence.

(2) The notification must set out—

- (a) the nature of the allegations contained in the reportable complaint;
- (b) the date, time and place of the interview or collection of evidence and the form in which it will be conducted; and
- (c) the particulars of the interviewee and the interviewer.

(3) If the Commissioner has conducted an interview or any collection of evidence referred to in subsection (1) (“the incident”) without prior notice to the Council, the Commissioner must, as soon as practicable after the incident and in writing—

- (a) notify the Council of the incident;
- (b) explain to the Council the reasons why such prior notice has not been given; and
- (c) provide to the Council information that would have been required to be set out, under subsection (2), in a notification in respect of the interview or collection of evidence if such prior notice had been given.

**37. Observers may attend interviews and
observe collection of evidence**

(1) For the purposes of section 34, an observer may at any time and without prior appointment—

- (a) attend an interview conducted by the Commissioner in respect of a reportable complaint; and
- (b) observe the collection of evidence by the Commissioner in the investigation of a reportable complaint.

(2) After having attended the interview or having observed the collection of evidence, the observer must submit a report to the Council stating—

- (a) whether, in his opinion, the interview or collection of evidence has been conducted in a fair and impartial manner; and
- (b) where applicable, the particulars of any irregularities detected by the observer in respect of the interview or collection of evidence.

(3) If an observer has an interest (whether directly or indirectly) in a reportable complaint in respect of which an interview or collection of evidence is conducted by the Commissioner, the observer must not attend the interview or observe the collection of evidence.

(4) If, during the interview or collection of evidence, it comes to the knowledge of the observer that he has an interest (whether directly or indirectly) in the reportable complaint, he must—

- (a) in the case of an interview, disclose the nature of his interest to—
 - (i) the police officer who is designated by the Commissioner to conduct the interview; and
 - (ii) the person who is being interviewed;
- (b) in the case of collection of evidence, disclose the nature of his interest to—
 - (i) the police officer who is designated by the Commissioner to conduct the collection of evidence; and
 - (ii) (if applicable) the person from whom evidence is being collected;
- (c) withdraw from the interview or observation of the collection of evidence (as the case may be); and
- (d) report the nature of his interest to the Council.

38. Council may determine procedures, duty roster, etc. relating to observers

(1) The Council may determine—

- (a) the procedure that applies in relation to an observer's attendance at an interview conducted by the Commissioner in respect of a reportable complaint;
- (b) the procedure that applies in relation to an observer's observation of the collection of evidence by the Commissioner in the investigation of a reportable complaint;
- (c) the drawing up of a duty roster of the observers; and
- (d) any operational matter or arrangement that relates to the performance of the functions of observers under the provisions of this Part.

(2) For the avoidance of doubt, a duty roster under subsection (1)(c) does not affect an observer's right under section 37(1) to attend an interview or observe the collection of evidence at any time.

PART 5

CONFIDENTIALITY AND PROTECTION OF COUNCIL AND ITS MEMBERS, ETC.

39. Interpretation of Part 5

In this Part—

“protected information” (受保護資料) means matters relating to any complaint that come to a specified person’s actual knowledge in the performance of his functions under this Ordinance;

“specified person” (指明人士) means—

- (a) the Council;
- (b) a member of the Council;
- (c) the Secretary-General, the Legal Adviser or any other employee of the Council;
- (d) a person engaged by the Council for his technical or professional services;
- (e) an observer; or
- (f) a person who at any time had any of the identities described in paragraphs (b), (c), (d) and (e).

40. Duty to keep confidence

(1) Except in the circumstances provided for in subsection (2), a specified person must not disclose any protected information.

(2) Subsection (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary—

- (a) for the performance of his functions under this Ordinance;
- (b) for the purpose of reporting evidence of any crime or any suspected crime to such authority as he considers appropriate;
- (c) for the purpose of complying with—
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,in relation to any criminal, civil or disciplinary proceedings; or
- (d) for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).

(3) For the avoidance of doubt, in making a disclosure under subsection (2)(a), the Council may disclose to the public—

- (a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or
 - (b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint.
- (4) Subject to subsection (5), subsection (2)(a) does not authorize the disclosure of the identity of—
- (a) any complainant;
 - (b) any member of the police force whose conduct is the subject of a complaint; or
 - (c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.
- (5) A disclosure of any identity referred to in subsection (4)(a), (b) or (c) may be made pursuant to subsection (2)(a) if the disclosure is made to—
- (a) a specified person as defined in section 39 (other than paragraph (f) of that definition);
 - (b) the complainant;
 - (c) a person who has written authorization from the complainant—
 - (i) to make a complaint or request for review on behalf of the complainant (as provided in section 15); or
 - (ii) to handle in the complainant's stead the complaint or request for review made by the complainant;
 - (d) the Commissioner;
 - (e) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint;
 - (f) a person whom the Council invites to an interview pursuant to section 20 or any person who is present at an interview in accordance with that section; or
 - (g) the Chief Executive.

41. Protection of Council and its members, etc.

(1) Any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under this Ordinance will not render the specified person liable to any civil proceedings.

(2) For the purposes of the law of defamation, if a specified person makes any comment or publishes any matter in relation to a complaint—

- (a) in any communication, report or statement, in writing or otherwise; and
- (b) for the performance of his functions under this Ordinance, that comment or publication is absolutely privileged.

(3) The protection given by subsection (1) or (2) does not apply to a specified person within the meaning of paragraph (d) of the definition of “specified person” in section 39.

PART 6

TRANSITIONAL AND SAVINGS PROVISIONS

42. Interpretation of Part 6

In this Part—

“commencement date” (生效日期) means the date of commencement of this Ordinance;

“former Council” (前警監會) means the Independent Police Complaints Council existing immediately before the commencement date;

“former observer” (前觀察員) means a person who was an observer under the scheme known as the Independent Police Complaints Council observers scheme existing immediately before the commencement date.

43. Continuance of things done by former Council

(1) The enactment of this Ordinance does not affect the validity of anything done by, in relation to or on behalf of the former Council before the commencement date.

(2) Anything done before the commencement date by, in relation to or on behalf of the former Council pursuant to or in connection with its functions has effect as from that date as if done by, in relation to or on behalf of the Council.

(3) Anything that, immediately before the commencement date, is in the process of being done by, in relation to or on behalf of the former Council pursuant to or in connection with its functions may, as from that date, be continued by, in relation to or on behalf of the Council to the extent that it is consistent with this Ordinance.

44. Pre-existing legal claims

Without limiting section 43, a legal claim (including any judicial and administrative proceedings)—

(a) by or against the former Council; and

(b) existing immediately before the commencement date,

does not abate by reason of the commencement of this Ordinance.

45. Continuance of appointment

(1) Subject to subsection (2), a person who, immediately before the commencement date—

(a) holds an appointment as the Chairman, a Vice-Chairman or any other member of the former Council; or

(b) is a former observer,

continues to be, as from that date, the Chairman, a Vice-Chairman or such other member of the Council or an observer (as the case may be) as if he were appointed under this Ordinance.

(2) The person in subsection (1) continues to hold his appointment only for the unexpired term under his previous appointment, but is eligible for reappointment under section 1(b) or 2(b) of Schedule 1 or section 1(b) of Schedule 2 (as the case may be).

(3) A person who, immediately before the commencement date, is the Secretary or the Legal Adviser of the former Council continues to be, as from that date until the Secretary-General or the Legal Adviser (as the case may be) has been appointed under section 6(1), the Secretary-General or the Legal Adviser (as the case may be) of the Council on the same terms and conditions as those applicable to that person immediately before that date.

(4) A person who, immediately before the commencement date, is an officer (other than the Secretary and the Legal Adviser) of the former Council continues to be, as from that date until such time as the Council and the Government may agree, such officer of the Council on the same terms and conditions as those applicable to that person immediately before that date.

46. Lists submitted to former Council

In relation to—

(a) the first list of reportable complaints submitted under section 9(1)(a); or

(b) the first list of notifiable complaints submitted under section 9(1)(b),

the last list containing the corresponding information that was submitted by the Commissioner to the former Council before the commencement date is to be regarded as—

(c) the last list of reportable complaints for the purposes of section 9(2); or

(d) the last list of notifiable complaints for the purposes of section 9(3),

as may be applicable.

PART 7

CONSEQUENTIAL AMENDMENTS

Prevention of Bribery Ordinance

47. Public bodies

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

“109. Independent Police Complaints Council.”.

The Ombudsman Ordinance

48. Organizations to which this Ordinance applies

Part II of Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended by repealing “Secretariat of the Independent Police Complaints Council.”.

SCHEDULE 1

[ss. 3, 7 & 45]

PROVISIONS WITH RESPECT TO MEMBERS, PROCEEDINGS, COMMITTEES AND
FINANCES OF, AND EXECUTION OF DOCUMENTS BY, AND OTHER
MISCELLANEOUS MATTERS OF, COUNCIL

Members of Council

1. Term of office of Chairman

The Chairman (other than a person appointed under section 5)—

- (a) is to be appointed for a term not exceeding 3 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 3 years each.

2. Term of office of Vice-Chairmen and appointed members

A Vice-Chairman or an appointed member (other than a person appointed under section 5)—

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

3. Resignation of Chairman, Vice-Chairmen and appointed members

(1) The Chairman, a Vice-Chairman or an appointed member may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

4. Removal of Chairman, Vice-Chairmen and appointed members

The Chief Executive may by notice in writing remove the Chairman, a Vice-Chairman or an appointed member from office if the Chief Executive is satisfied that the Chairman, Vice-Chairman or appointed member (as the case may be) is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

5. Acting appointment

The Chief Executive may appoint any person to act as the Chairman, a Vice-Chairman or an appointed member if—

- (a) the Chairman, Vice-Chairman or appointed member (as the case may be) is precluded by illness, absence from Hong Kong or any other cause from performing his functions; or
- (b) the office of the Chairman, Vice-Chairman or appointed member (as the case may be) is vacant pending a new appointment or reappointment.

6. Fees and allowances to Chairman, Vice-Chairmen and appointed members

The Council may pay the Chairman, Vice-Chairmen and appointed members such fees and allowances as the Chief Executive may determine.

Execution of documents by Council

7. Seal and documents of Council

- (1) The Council is to have a common seal.
- (2) The common seal may be affixed to a document only if authorized by a resolution of the Council.
- (3) The affixing of the common seal is to be authenticated by the signatures of any 2 members of the Council authorized by the Council, either generally or specially in that behalf.
- (4) A document purporting to be duly executed under the common seal is to be regarded as having been duly executed unless the contrary is proved.
- (5) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under seal, may be entered into or executed on behalf of the Council by any of its members, the Secretary-General, the Legal Adviser or any other employee of the Council generally or specially authorized by the Council in that behalf.

Proceedings of Council

8. Council meetings

- (1) The Council is to meet as often as is necessary for the purpose of performing its functions.
- (2) The Chairman may appoint the time and place for the Council to meet.
- (3) The Council may, by its procedure determined under section 16, make provisions for a Vice-Chairman to appoint, in the absence of the Chairman, the time and place for the Council to meet.

9. Quorum for Council meetings

The quorum for a meeting of the Council is 6 members of the Council.

10. Chairman to preside at Council meetings

- (1) The Chairman must preside at a meeting of the Council.
- (2) If the Chairman is absent or vacates the chair, a Vice-Chairman elected by the appointed members present must preside at the meeting.
- (3) If neither the Chairman nor the 3 Vice-Chairmen can preside at the meeting, an appointed member elected from amongst the appointed members present must preside at the meeting.

11. Determination of matters at Council meetings

(1) A matter for determination at a meeting of the Council must be decided by a majority of the votes of the members of the Council present and voting on that matter.

(2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.

(3) Subject to subsection (5), anything that may be done at a meeting of the Council may be done by circulation of papers to all members of the Council without a meeting.

(4) Subject to subsection (5), a written resolution that is approved by a majority of all members of the Council is as valid and effectual as if it had been passed at a meeting of the Council by the votes of the members so approving.

(5) If any member of the Council requests by notice in writing addressed to the Secretary-General that a matter referred to in the papers circulated under subsection (3) be determined at a meeting of the Council, the matter must be so determined.

(6) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and a reference to the papers in this section must be construed accordingly.

12. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of the Council has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the Council, the member—

(a) must disclose the nature of his interest at or before the meeting;

(b) must withdraw from the meeting during the discussion of the complaint;

(c) must not vote on a resolution concerning the complaint; and

(d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

13. Disclosure of interest in matters other than reportable complaints and notifiable complaints

(1) If a member of the Council has an interest (whether directly or indirectly) in a matter (“the Matter”) being discussed or to be discussed at a meeting of the Council and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member—

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting—
 - (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

14. Disclosure of interest in cases of written resolutions

In the case of a written resolution on a matter in which a member of the Council has an interest (whether directly or indirectly)—

- (a) the member—
 - (i) must state the nature of his interest in the papers being circulated; and
 - (ii) must return the papers with his interest so stated to the Secretary-General; and
- (b) the member—
 - (i) must not vote on the written resolution; and
 - (ii) must not be counted in calculating a majority for the approval of the written resolution.

15. Disclosure of interest be recorded

A disclosure made under section 12(1)(a), 13(1)(a) or 14(a) must be recorded by the Council.

16. Council may determine its own procedure

Subject to the other provisions of this Ordinance, the Council may determine its own procedure.

Committees of Council

17. Establishment of committees

The Council may from amongst its members establish committees, panels or sub-groups to assist the Council in the performance of any of its functions under this Ordinance.

18. Chairman of committee

(1) The chairman of a committee must be elected from amongst its members.

(2) The chairman of a committee must preside at a meeting of the committee.

(3) If the chairman of a committee is absent or vacates the chair, a member of the committee elected from amongst the members of the committee present must preside at the meeting.

19. Determination of matters at committee meetings

(1) A matter for determination at a meeting of a committee must be decided by a majority of the votes of the members of the committee present and voting on that matter.

(2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.

(3) Subject to subsection (5), anything that may be done at a meeting of a committee may be done by circulation of papers to all members of the committee without a meeting.

(4) Subject to subsection (5), a written resolution that is approved by a majority of all members of a committee is as valid and effectual as if it had been passed at a meeting of the committee by the votes of the members so approving.

(5) If any member of a committee requests by notice in writing addressed to the Secretary-General that a matter referred to in the papers circulated under subsection (3) be determined at a meeting of the committee, the matter must be so determined.

(6) For the avoidance of doubt, a reference to circulation of papers in this section includes circulation of information by electronic means, and a reference to the papers in this section must be construed accordingly.

20. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of a committee has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the committee, the member—

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the complaint;
- (c) must not vote on a resolution concerning the complaint; and
- (d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

21. Disclosure of interest in matters other than reportable complaints and notifiable complaints

(1) If a member of a committee has an interest (whether directly or indirectly) in a matter (“the Matter”) being discussed or to be discussed at a meeting of the committee and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member—

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting—
 - (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

22. Disclosure of interest in cases of written resolutions

In the case of a written resolution on a matter in which a member of a committee has an interest (whether directly or indirectly)—

- (a) the member—
 - (i) must state the nature of his interest in the papers being circulated; and
 - (ii) must return the papers with his interest so stated to the Secretary-General; and
- (b) the member—
 - (i) must not vote on the written resolution; and
 - (ii) must not be counted in calculating a majority for the approval of the written resolution.

23. Disclosure of interest be recorded

A disclosure made under section 20(1)(a), 21(1)(a) or 22(a) must be recorded by the committee.

24. Committee may determine its own procedure

Subject to the other provisions of this Ordinance, each committee may determine its own procedure.

Finances of Council

25. Resources of Council

The resources of the Council consist of—

- (a) all money paid by the Government to the Council and appropriated for that purpose by the Legislative Council; and
- (b) all other money and property, including fees, gifts, donations, interest and accumulations of income, received by the Council.

26. Investment of funds

(1) Subject to subsection (2), the Council may invest money that is not immediately required to be expended.

(2) The Council must not invest money except in such form of investment as the Financial Secretary approves.

27. Financial year

The financial year of the Council is—

- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; and
- (b) the period of 12 months ending on 31 March in each subsequent year.

28. Council to keep proper accounts

(1) The Council must keep proper accounts of its financial transactions.

(2) As soon as practicable after the end of a financial year of the Council, the Council must prepare—

- (a) a statement of accounts for that financial year containing an income and expenditure account and a cash flow statement; and
- (b) a balance sheet showing the financial position of the Council as at the end of that financial year.

29. Audit of statement of accounts

(1) The Council must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of that Ordinance.

(2) As soon as practicable after the end of a financial year of the Council, the auditor must—

- (a) audit the accounts and the statement of accounts prepared by the Council for that financial year; and
- (b) submit to the Council a report on the statement of accounts.

30. Annual reports of Council

(1) As soon as practicable and in any case not later than 6 months after the end of a financial year of the Council, or such further period (as may be reasonable in the circumstances) as the Chief Executive may allow, the Council must submit to the Chief Executive—

- (a) a report on the performance of the Council's functions under this Ordinance during that financial year;
- (b) a copy of the statement of accounts prepared by the Council for that financial year; and
- (c) a copy of the auditor's report on the statement of accounts prepared by the Council that is submitted to the Council under section 29(2).

(2) The Council must cause the documents referred to in subsection (1) to be tabled in the Legislative Council as soon as practicable after receiving the Chief Executive's approval for tabling.

31. Director of Audit's examination

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

(2) The Director of Audit—

- (a) has a right of access at all reasonable times to all such records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other property in the custody or under the control of the Council as he may reasonably require for the purpose of conducting an examination under this section; and
- (b) is entitled to require from any person who holds or is accountable for any such document or materials such information and explanation as he considers reasonably necessary for that purpose.

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

(4) Subsection (1) does not entitle the Director of Audit to question the merits of the policy objectives of the Council.

Miscellaneous matters

32. Delegation of functions

(1) The Council may delegate in writing any of its functions under this Ordinance to a committee, a member of the Council, the Secretary-General, the Legal Adviser or any other employee of the Council, but a function specified in subsection (6) may not be so delegated.

(2) A delegation under this section may be general or limited and may be subject to conditions.

(3) The Council may, at any time, amend or revoke a delegation made under this section.

(4) A delegate of the Council under this section is presumed to be acting in accordance with the terms of the relevant delegation in the absence of evidence to the contrary.

(5) A delegated function may be performed by the Council despite the delegation.

(6) The functions that the Council may not delegate under subsection (1) are—

- (a) the power to delegate under that subsection;
- (b) the duty to submit an annual report, statement of accounts and auditor's report to the Chief Executive under section 30(1); and
- (c) the power to make a report to the Chief Executive under section 30 of this Ordinance.

33. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

SCHEDULE 2

[ss. 35 & 45]

PROVISIONS WITH RESPECT TO OBSERVERS

1. Term of office of observers

An observer—

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of observers

(1) An observer may resign from office by giving notice in writing to the Secretary for Security.

(2) The resignation under subsection (1) takes effect on the date the Secretary for Security receives the notice or the date specified in the notice (whichever is the later).

3. Removal of observers

The Secretary for Security may by notice in writing remove an observer from office if the Secretary for Security is satisfied that the observer is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

4. Fees and allowances to observers

The Council may pay the observers such fees and allowances as the Secretary for Security approves.