



中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA

11 Chemin de Surville, 1213 Petit-Lancy
Tel: +41 (0)22 879 56 78 Fax: +41 (0) 22 793 70 14
Email: chinamission_gva@mfa.gov.cn Website: www.china-un.ch

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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the latter's communication [AL CHN 12/2019] dated 28 June 2019 and the reply by the Chinese Government [No.GJ/49/2019] dated 7 September 2019, has the honour to transmit herewith the annex to the aforementioned reply.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 24 September 2019



Office of the High Commissioner for Human Rights
GENEVA

致聯合國特別報告員的回覆

一般原則

中華人民共和國香港特別行政區（香港特區）政府一向尊重市民和平集會和遊行的權利。根據《中華人民共和國香港特別行政區基本法》（《基本法》）第27條及《香港人權法案》第16和17條，香港居民享有言論、和平集會、遊行和示威的自由和權利。然而，根據《公民權利和政治權利國際公約》，該等自由和權利並非絕對，可為公共秩序或尊重他人的權利和自由等所必要者，經法律規定而予以限制。

2. 一直以來，香港警隊（警方）根據香港法律，以公平、公正和不偏不倚的態度處理所有公眾活動。警方的方針是致力取得平衡，一方面盡量為合法及和平的公眾集會及遊行給予便利以助其順利舉行，另一方面亦須致力減低這些活動對公眾及道路使用者的影響，並確保公共秩序和公共安全。

3. 警方的職責是採取合法措施維持公共秩序及公共安全。若有人進行違法行為，或若公共秩序、公共安全及市民生命及財產受到威脅，警務人員必須根據實際情況作出專業判斷，採取適當行動，包括調配適當的人手及裝備、啓動適當的行動計劃、考慮是否需要使用適當的武力、考慮所使用的武力應透過何等裝備可達到等，以防止公共秩序和公共安全被破壞。香港特區政府一向呼籲參與公眾活動的人士，在表達訴求時應遵守法律，和平有序，不應有任何破壞公共秩序或暴力的行為。

4. 警方在使用武力方面有既定指引。警務人員只有在有需要及沒有其他辦法可完成合法任務的情況下，才會適當地使用最低程度武力。警務人員在使用武力前，會在情況許可下盡量向聚集的人群發出警告，並在可行範圍內，讓他們有機會服從警方命令，然後才會使用武力。當使用武力的目的已達，警方會停止使用該武力。

5. 警方在使用武力方面的相關指引與特別報告員來函的附件所述的國際人權規範和標準一致。

警方 2019 年 6 月 12 日的行動

6. 2019 年 6 月 12 日大約上午八時，有大量戴口罩及戴上保護裝備的示威人士，聚集及霸佔立法會大樓附近的多條道路，嚴重阻塞交通和擾亂社會秩序，同時把立法會及毗鄰的政府總部全面包圍，部分人更作出威嚇及挑釁的行為。有警車及市民車輛被困在龍和道的隧道內，需要警方出動談判專家與示威者進行談判。有警員及市民因而被困在車廂內接近八小時，人身自由嚴重受阻。非法阻塞交通及堵路令龍和道、夏慤道一帶的交通全面癱瘓。即使如此，警方一直採取容忍的態度。然而，上午十一時左右，聚集於夏慤道添華道交界的示威者，開始不斷衝擊警方防線並向警方投擲硬物。

7. 下午三時左右情況進一步惡化。大量示威者不斷以暴力方式衝擊警方在添華道、夏慤道及立法會大樓設下的防線。他們用不同種類的武器例如磚頭、鐵枝、鐵馬、木板等攻擊警察。這種暴力衝擊不但嚴重威脅在場人士（包括其他示威者、傳媒工作者和正在執勤的警務人員）的人身安全，也嚴重威脅公共安全和公共秩序。警方在考慮當時情況後，把在立法會的防線後退到立法會入口的示威區前，繼續保護立法會大樓和在內人士。

8. 就示威人士的違法行為，警方曾不斷及多次作出勸喻和發出警告，但他們沒有理會。而在較前方的示威者更加繼續有組織地向警方投擲磚頭，又用鐵枝、鐵馬、木板等武器暴力衝擊警方防線，嚴重破壞公共安全和公共秩序，嚴重威脅在場人士（包括其他示威者、傳媒工作者和正在執勤的警務人員）的人身安全甚至性命。經過多次警告無效後，現場指揮官因應當時實際環境、整體情況及行動需要，就應使用武力的作出專業判斷，並在別無選擇的情況下，決定使用適當和必要的武力驅散人群及控制場面，藉此希望令公共安全的及公共秩序免受進一步破壞，以及保護其他人及警務人員的安全。

9. 因應現場環境、整體情況及行動需要，為保障立法會內人士及正在執勤的警務人員的安全，警方在驅散行動中使

用了最低程度武力，包括警棍、胡椒噴劑、催淚水劑、催淚煙、布袋彈、橡膠彈等非致命性裝備合法地執行職責。

10. 前述示威者在 6 月 12 日引發的暴力衝擊可能觸犯了香港法例下的不同的罪行。根據《公安條例》(第 245 章)第 18(1)條，凡有 3 人或多於 3 人集結在一起，作出擾亂秩序的行為或作出帶有威嚇性、侮辱性或挑撥性的行為，意圖導致或相當可能導致任何人合理地害怕如此集結的人會破壞社會安寧，或害怕他們會藉以上的行為激使其他人破壞社會安寧，即屬「非法集結」。此外，根據《公安條例》第 19 條，任何參與非法集結的人破壞社會安寧，該集結即屬暴動，參與暴動的人即犯暴動罪。一經循公訴程序定罪，任何人犯非法集結罪可處監禁 5 年，犯暴動罪可處監禁 10 年。

11. 截至 7 月 29 日，警方就 6 月 12 日的行動一共拘捕 32 人，所涉及的罪行包括在公眾地方擾亂秩序、非法集結、襲警、暴動等。

檢控工作

12. 香港特區所有刑事案件的調查工作皆由執法機關負責。針對刑事案件，警方會在調查完畢後，交予律政司獨立決定是否提出檢控。

13. 警方對所有案件均會公平、公正地調查及全力蒐集證據。《基本法》第 28 條及《香港人權法案》第 5(1)條都規定任何人不得無理予以逮捕或拘禁，其保障與《公民權利和政治權利國際公約》第 9(1)條相同。根據《警隊條例》(第 232 章)第 50 條，如果警務人員合理地懷疑有人犯了可被判處監禁的罪行，有權拘捕相關人等。警方是專業的執法部門，只會在有人涉嫌違法的情況下才依法作出拘捕。警方對所有違法行為均一視同仁，也會平等對待所有市民，被捕人的政治立場絕對不會是作出拘捕的考慮因素。

14. 根據《基本法》第 63 條，香港特區律政司主管刑事檢控工作，不受任何干涉。就每宗案件的刑事檢控決定，律政司必須按證據、適用法律和《檢控守則》作出。除非有充分可被接納的證據令案件有合理機會達致定罪，否則律政司不

會提出檢控。如有充分證據支持檢控，律政司會繼而考慮作出檢控是否符合公眾利益，考慮的因素包括罪行的性質、情況及嚴重程度等。

15. 香港特區的法治精神和獨立的司法制度，是社會的核心價值，並一向得到國際社會的高度評價和認同。在刑事司法方面，任何受刑事檢控的人均會獲公開及公平的審訊，並享有《香港人權法案》第 10 條及第 11 條（與《公民權利和政治權利國際公約》第 14 條相同）的保障。

相關投訴的處理

16. 對於警方 6 月 12 日的執法行動的意見或投訴，香港設有兩層的投訴警察制度。制度的第一層是負責接收及調查投訴的警隊投訴警察課，第二層是法定及獨立的獨立監察警方處理投訴委員會（監警會）。監警會是根據《獨立監察警方處理投訴委員會條例》（第 604 章）成立的獨立機構，職能包括觀察、監察和覆檢警務處處長就須匯報投訴個案的處理和調查工作。兩層的投訴處理機制下，任何對警察的投訴都會得到公平和公正的處理。

17. 過往監警會曾對公眾活動進行審視和作出報告。監警會早前已決定並公佈會就自 2019 年 6 月 9 日起發生的大型公眾活動，以及警方採取的相應行動，主動進行詳細審視和作出報告。監警會已成立專案組，並開設多個渠道，包括電子平台和電話熱線，供各持份者及市民大眾提供資料，為日後進行的審核投訴工作提供全面的背景及基礎。監警會將根據《獨立監察警方處理投訴委員會條例》第 8(1)(c) 條，在警方採納的常規或程序中，協助找出警方工作程序中可能出現的不足之處，考慮需要作出的建議。監警會亦已表明會爭取在六個月內完成有關報告，並會向行政長官提交報告，及向公眾公布詳情。此外，警方投訴警察課已成立一隊特別隊伍處理與活動相關的投訴。這些人員均沒有參與相關活動的行動，以確保個案得到公平和公正的處理。

18. 截至 7 月 29 日，投訴警察課收到 287 宗與相關示威活動有關的投訴，主要涉及行為不當／態度欠佳／粗言穢語、疏忽職守、毆打以及濫用職權。由於相關投訴已在法定的投

訴程序下展開，香港特區政府不適宜評論個別個案或指控。

香港特別行政區政府
2019年8月

相關文本

- 附件一 《基本法》
第 27、28 及 63 條
- 附件二 《香港人權法案條例》(第 383 章)
《香港人權法案》第 5、10、11、16 及 17 條
- 附件三 《警隊條例》(第 232 章)
第 50 條
- 附件四 《檢控守則》
- 附件五 《公安條例》(第 245 章)
第 18 及 19 條
- 附件六 《獨立監察警方處理投訴委員會條例》
(第 604 章)

Reply to United Nations Special Rapporteurs

General principles

The Government of the Hong Kong Special Administrative Region (“HKSAR”) of the People’s Republic of China respects citizens’ rights to peaceful assembly and procession. According to Article 27 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (“Basic Law”) and Articles 16 and 17 of the Hong Kong Bill of Rights, Hong Kong residents shall have freedoms and rights of speech, peaceful assembly, procession and demonstration. However, according to the International Covenant on Civil and Political Rights (“ICCPR”), such freedoms and rights are not absolute and are subject to restrictions as prescribed by law and necessary for the protection of public order or respect of the rights and freedoms of others.

2. The Hong Kong Police Force (“Police”) has always handled all public order events in a fair, just and impartial manner in accordance with the laws of Hong Kong. It is the Police’s policy to endeavour to strike a balance between facilitating the smooth conduct of lawful and peaceful public meetings and processions on the one hand, while on the other, minimising the impact of such events on members of the public and road users, as well as ensuring public order and public safety.

3. It is the Police’s duty to take lawful measures to maintain public order and public safety. If someone engages in illegal acts, or if public order, public safety and the lives and properties of members of the public are threatened, police officers must exercise professional judgement in light of the actual circumstances and take appropriate actions, including deploying appropriate manpower and equipment, activating appropriate action plans, considering whether the use of appropriate force is necessary, considering what equipment should be used to achieve the purpose of using force, etc., to prevent public order and public safety from being jeopardised. The HKSAR Government has always urged participants of public order events to remain law-abiding, peaceful and orderly when expressing their views and refrain from behaviours that are detrimental to public order or violent.

4. The Police have established guidelines on the use of force. Police officers may use minimum force as appropriate only when such an action is necessary and there are no other means to accomplish lawful duties. Before force is used, police officers shall, where circumstances permit, give warnings to the gathering crowd prior to the use of force, and give the person(s) involved every opportunity, whenever practicable, to obey police orders. Once the purpose of using force is achieved, Police will cease to use force.

5. The Police's guidelines on the use of force are consistent with the international human rights norms and standards cited in the Annex to the Special Rapporteurs' letter.

Police operations on 12 June 2019

6. On 12 June 2019, at about 8 a.m., a large number of people in mask and protective gears gathered and occupied multiple roads in the vicinity of the Legislative Council ("LegCo") Complex. They blocked the traffic and disrupted social order, and at the same time fully besieged the LegCo Complex and the adjacent Central Government Offices. Some of them even did threatening and provocative acts. A police vehicle and the cars of some citizens were trapped in the tunnel at Lung Wo Road, warranting the deployment of Police Negotiators to negotiate with the protesters. Police officers and citizens were thus trapped inside the vehicles for nearly eight hours, with their personal freedom seriously impeded. The unlawful disruption of traffic and blockage of roads paralysed the traffic in the vicinity of Lung Wo Road and Harcourt Road. Notwithstanding this, the Police had acted with tolerance. However, from around 11 a.m., protesters at the junction of Harcourt Road and Tim Wa Avenue started charging the police cordon line repeatedly and hurling hard objects at police officers.

7. At around 3 p.m., the situation further deteriorated when a large number of protesters repeatedly charged the police cordon line at Tim Wa Avenue, Harcourt Road and the LegCo Complex with violence. They attacked police officers with different kinds of weapons such as bricks, metal poles, mills barriers and wooden planks. Such violent charging

posed not only serious threats to the personal safety of people at the scene (including other protesters, media workers and police officers on duty), but also to public safety and public order. In light of the circumstances at the scene, the Police withdrew the cordon line to the demonstration area at the entrance of the LegCo Complex and continued to protect the LegCo Complex and the persons therein.

8. With regard to the illegal acts of the protestors, the Police had continuously and repeatedly given advice and warning, but was ignored by the protestors. Protesters at the front continuing to hurl bricks at Police and use weapons such as metal poles, mills barriers and wooden planks to charge the police cordon line violently in an organised manner. This seriously jeopardised public safety and order, as well as endangered the personal safety or even lives of those at the scene (including other protesters, media workers and police officers on duty). Having issued repeated warnings but in vain, the field commander exercised professional judgment on the appropriate force to be used in light of the circumstances at the scene, the overall situation and operational needs. With no other alternatives, the field commander decided to use appropriate and necessary force to disperse the crowd and control the situation in order to prevent public safety and public order from being further endangered, and to protect the safety of others and police officers.

9. In light of the circumstances at the scene, the overall situation and operational needs, and to ensure the safety of people inside the LegCo Complex and police officers on duty, the Police used minimum force in the dispersal operation, including the use of non-lethal equipment such as batons, pepper sprays, tear sprays, tear gases, bean bag rounds and rubber bullets, to discharge their duties in a lawful manner.

10. The violent charging by protestors on 12 June mentioned above may have contravened various offences under the laws of Hong Kong. Pursuant to section 18(1) of the Public Order Ordinance (Cap. 245), when 3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such conduct provoke other persons to commit a breach of the peace, they are an "unlawful assembly". In

addition, according to section 19 of the Public Order Ordinance, when any person taking part in an unlawful assembly commits a breach of the peace, the assembly is a riot and the person taking part is guilty of the offence of riot. Upon conviction on indictment, any person who is guilty of the offence of unlawful assembly shall be liable to imprisonment for 5 years, and any person who is guilty of the offence of riot shall be liable to imprisonment for 10 years.

11. As at 29 July, the Police have arrested a total of 32 persons in connection with the operation on 12 June, involving offences including disorderly conduct in a public place, unlawful assembly, assaulting police officers, riot, etc.

Prosecutions

12. All criminal investigations in the HKSAR are conducted by law enforcement agencies. In respect of criminal cases, the Police will, after completing investigation, refer the cases to the Department of Justice ("DoJ") for independent decisions on whether prosecutions would be instigated.

13. The Police will investigate all cases in a fair and just manner and make all efforts to collect evidence. It is stipulated in Article 28 of the Basic Law and Article 5(1) of the Hong Kong Bill of Rights that no one shall be subjected to arbitrary arrest or detention. The two Articles provide the same protection as Article 9(1) of ICCPR. Pursuant to section 50 of the Police Force Ordinance (Cap. 232), police officers have the right to apprehend any persons whom they reasonably suspect of being guilty of any offence for which a person may be sentenced to imprisonment. As a professional law enforcement agency, the Police will make arrests in accordance with the law only when there are suspected illegal acts. The Police will deal with all unlawful acts and treat all members of the public equally. The political stance of the arrestees is definitely not a consideration for making arrest.

14. According to Article 63 of the Basic Law, DoJ of HKSAR shall control criminal prosecutions, free from any interference. DoJ makes each prosecutorial decision based on evidence, the applicable laws and its

Prosecution Code. Unless there is sufficient admissible evidence to support a reasonable prospect of conviction, no prosecution should be instigated. If there is sufficient evidence to support a prosecution, DoJ will then consider whether it is in the public interest to do so. Factors to be considered include the nature, circumstances and seriousness of the offence.

15. HKSAR's rule of law and independent judicial system are the core values of our society, and have long been highly regarded and recognised by the international community. In respect of criminal justice, any person under criminal prosecution is entitled to an open and fair trial and enjoy the protection of Articles 10 and 11 of the Hong Kong Bill of Rights (which are the same as Article 14 of ICCPR).

Handling of relevant complaints

16. In respect of the views or complaints concerning the enforcement operation on 12 June, Hong Kong has put in place a two-tier police complaints mechanism. The first tier of the mechanism is the Complaints Against Police Office ("CAPO") of the Police which receives and investigates into complaints. The second tier is the Independent Police Complaints Council ("IPCC") which is a statutory and independent body set up under the Independent Police Complaints Council Ordinance ("IPCCO") (Cap. 604). The functions of IPCC include observing, monitoring and reviewing the handling and investigation of reportable complaint cases by the Commissioner of Police. Under this two-tier complaints handling mechanism, any complaint against the Police will be handled in a fair and just manner.

17. IPCC has examined and made reports on public order events in the past. IPCC has earlier decided and announced that, in regard to the major public order events which took place since 9 June 2019 and the corresponding operations of the Police, it shall proactively conduct a study and make a report. IPCC has set up a Special Task Force and opened multiple channels, including a dedicated email portal and a hotline, to allow stakeholders and the public to provide information, thereby providing full background and basis for the subsequent review of complaints. Pursuant to section 8(1)(c) of IPCCO, IPCC will, in regard

to the practice or procedure adopted by the Police, help identify any possible deficiency in the Police's work procedures and consider making necessary recommendations. IPCC has indicated that it would endeavour to complete the report within six months, submit the report to the Chief Executive and release the details to the public. Besides, CAPO of the Police has set up a designated team to handle complaints in relation to the events. To ensure that the cases are handled fairly and impartially, all members of the team did not participate in the relevant operations concerning the events.

18. As at 29 July, CAPO has received 287 complaints concerning the demonstration activities, which mainly involved misconduct/improper manner/offensive language, neglect of duty, assault and abuse of power. Since the statutory complaint procedures for the relevant complaints have already commenced, it would be inappropriate for the HKSAR Government to comment on individual cases or allegations.

Government of the Hong Kong Special Administrative Region
August 2019

Relevant texts

- Annex 1 Articles 27, 28 and 63 of the Basic Law
- Annex 2 Hong Kong Bill of Rights Ordinance (Cap. 383)
Articles 5, 10, 11, 16 and 17 of the
Hong Kong Bill of Rights
- Annex 3 Section 50 of the Police Force Ordinance (Cap. 232)
- Annex 4 Prosecution Code
- Annex 5 Sections 18 and 19 of the Public Order Ordinance
(Cap. 245)
- Annex 6 Independent Police Complaints Council Ordinance
(Cap. 604)

《中華人民共和國香港特別行政區基本法》

第二十七條

香港居民享有言論、新聞、出版的自由，結社、集會、遊行、示威的自由，組織和參加工會、罷工的權利和自由。

第二十八條

香港居民的人身自由不受侵犯。

第六十三條

香港特別行政區律政司主管刑事檢察工作，不受任何干涉。

Annex 1

**The Basic Law of the Hong Kong Special Administrative Region of
the People's Republic of China**

Article 27

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 28

The freedom of the person of Hong Kong residents shall be inviolable.

Article 63

The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.

Cap. 383 Hong Kong Bill of Rights Ordinance 15/02/2017

第383章 《香港人權法案條例》 15/02/2017

8. 香港人權法案
香港人權法案如下所列。

8. Hong Kong Bill of Rights
The Hong Kong Bill of Rights is as follows.

第一條

Article 1

享受權利不分區別

Entitlement to rights without distinction

- (一) 人人得享受人權法案所確認之權利，無分種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分等等。
(二) 人權法案所載一切公民及政治權利之享受，男女權利，一律平等。

- (1) The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
(2) Men and women shall have an equal right to the enjoyment of all civil and political rights set forth in this Bill of Rights.

[比照《公民權利和政治權利國際公約》第二及三條]

[cf. ICCPR Arts. 2 & 3]

第二條

生存的權利

Article 2

- (一) 人人皆有天賦之生存權。此種權利應受法律保障。任何人生命不得無理剝奪。
(二) 非犯情節最重大之罪，且依照犯罪時有效並與人權法案規定及《防止及懲治殘害人犯罪公約》不抵觸之法律，不得科處死刑。死刑非依管轄法院終局判決，不得執行。
(三) 生命之剝奪構成殘害人犯罪時，不得認為本條授權以任何方式減免依《防止及懲治殘害人犯罪公約》規定所負之任何義務。
(四) 受死刑宣告者，有請求特赦或減刑之權。一切判處死刑之案件均得邀大赦、特赦或減刑。
(五) 未滿18歲之人犯罪，不得判處死刑；懷胎婦女被判死刑，不得執行其刑。
(六) 不得援引本條，而延緩或阻止在香港廢除死刑。

- (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
(2) Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

[比照《公民權利和政治權利國際公約》第六條]

第三條

不得施以酷刑或不人道處遇亦不得未經同意而施以試驗

任何人不得施以酷刑，或予以殘忍、不人道或侮辱之處遇或懲罰。非經本人自願同意，尤不得對任何人作醫學或科學試驗。

[比照《公民權利和政治權利國際公約》第七條]

第四條

不得使充奴隸或奴工

(一) 任何人不得使充奴隸；奴隸制度及奴隸販賣，不論出於何種方式，悉應禁止。

(二) 任何人不得使充奴工。

(三) (甲) 任何人不得使服強迫或強制之勞役。

(乙) 本項所稱“強迫或強制勞役”不包括下列各項——

(i) 經法院依法命令拘禁之人，或在此種拘禁假釋期間之人，通常必須擔任之工作或服役；

(ii) 任何軍事性質之服役，及在承認人民可以本其信念反對服兵役之情況下，依法對此種人徵服之國民服役；

(iii) 遇有緊急危難或災害禍患危及社會生命安寧時徵召之服役；

(iv) 為正常公民義務一部分之工作或服役。

[比照《公民權利和政治權利國際公約》第八條]

第五條

人身自由和安全

(一) 人人有權享有身體自由及人身安全。任何人不得無理予以逮捕或拘禁。非依法定理由及程序，不得剝奪任何人之自由。

(3) When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize the derogation in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(5) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong.

[cf. ICCPR Art. 6]

Article 3

No torture or inhuman treatment and no experimentation without consent

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

[cf. ICCPR Art. 7]

Article 4

No slavery or servitude

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.

(3) (a) No one shall be required to perform forced or compulsory labour.

第383章《香港人權法案條例》 - Cap. 383 Hong Kong Bill of Rights Ordinance

- (二) 執行逮捕時，應當場向被捕人宣告逮捕原因，並應隨即告知被控案由。
- (三) 因刑事罪名而被逮捕或拘禁之人，應迅即解送法官或依法執行司法權力之其他官員，並應於合理期間內審訊或釋放。候訊人通常不得加以羈押，但釋放得令具報，於審訊時、於司法程序之任何其他階段、並於一旦執行判決時，候傳到場。
- (四) 任何人因逮捕或拘禁而被奪自由時，有權聲請法院提審，以迅速決定其拘禁是否合法，如屬非法，應即令釋放。
- (五) 任何人受非法逮捕或拘禁者，有權要求執行損害賠償。

[比照《公民權利和政治權利國際公約》第九條]

第六條

被剝奪自由的人的權利

- (一) 自由被剝奪之人，應受合於人道及尊重其天賦人格尊嚴之處遇。
- (二) (甲) 除特殊情形外，被告應與判決有罪之人分別羈押，且應另予與其未經判決有罪之身分相稱之處遇。
(乙) 少年被告應與成年被告分別羈押，並應儘速即予判決。
- (三) 監獄制度所定監犯之處遇，應以使其後悔自新、重適社會生活為基本目的。少年犯人應與成年犯人分別拘禁，且其處遇應與其年齡及法律身分相稱。

[比照《公民權利和政治權利國際公約》第十條]

第七條

不得因違約而被監禁

任何人不得僅因無力履行契約義務，即予監禁。

[比照《公民權利和政治權利國際公約》第十一條]

第八條

- (b) For the purpose of this paragraph the term "forced or compulsory labour" shall not include—
 - (i) any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) any work or service which forms part of normal civil obligations.

[cf. ICCPR Art. 8]

Article 5

Liberty and security of person

- (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

遷徙往來的自由

- (一) 合法處在香港境內的人，在香港境內有遷徙往來之自由及擇居之自由。
- (二) 人人應有自由離去香港。
- (三) 上列權利不得限制，但法律所規定、保護國家安全、公共秩序、公共衛生或風化、或他人權利與自由所必要，且與人權法案所確認之其他權利不抵觸之限制，不在此限。
- (四) 具有香港居留權的人進入香港之權，不得無理褫奪。

[比照《公民權利和政治權利國際公約》第十二條]

第九條

驅逐出香港的限制

合法處在香港境內但沒有香港居留權的人，非經依法判定，不得驅逐出境，且除事關國家安全必須急速處分者外，應准其提出不服驅逐出境之理由，及聲請主管當局或主管當局特別指定之人員予以覆判，並為此目的委託代理人到場申訴。

[比照《公民權利和政治權利國際公約》第十三條]

第十條

在法院前平等及接受公正公開審問的權利

人人向法院或法庭之前，悉屬平等。任何人受刑事控告或因其權利義務涉訟須予判定時，應有權受獨立無私之法定管轄法庭公正公開審問。法院得因民主社會之風化、公共秩序或國家安全關係，或於保護當事人私生活有此必要時，或因情形特殊公開審判勢必影響司法而在其認為絕對必要之限度內，禁止新聞界及公眾旁聽審判程序之全部或一部；但除保護少年有此必要，或事關婚姻爭執或子女監護問題外，刑事民事之判決應一律公開宣示。

[比照《公民權利和政治權利國際公約》第十四一節]

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[cf. ICCPR Art. 9]

Article 6

Rights of persons deprived of their liberty

(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[cf. ICCPR Art. 10]

Article 7

No imprisonment for breach of contract

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

[cf. ICCPR Art. 11]

第十一條

被控告或判定犯有刑事罪的人的權利

- (一) 受刑事控告之人，未經依法確定有罪以前，應假定其無罪。
- (二) 審判被控刑事罪時，被告一律有權平等享受下列最低限度之保障——
 - (甲) 迅即以其通曉之語言，詳細告知被控罪名及案由；
 - (乙) 給予充分之時間及便利，準備答辯並與其選任之辯護人聯絡；
 - (丙) 立即受審，不得無故稽延；
 - (丁) 到庭受審，及親自答辯或由其選任辯護人答辯；未經選任辯護人者，應告以有此權利；法院認為審判有此必要時，應為其指定公設辯護人，如被告無資力酬償，得免付之；
 - (戊) 得親自或間接詰問他造證人，並得聲請法院傳喚其證人在與他造證人同等條件下出庭作證；
 - (己) 如不通曉或不能使用法院所用之語言，應免費為備通譯協助之；
 - (庚) 不得強迫被告自供或認罪。
- (三) 少年之審判，應顧念被告年齡及宜使其重適社會生活，而酌定程序。
- (四) 經判定犯罪者，有權聲請上級法院依法覆判其有罪判決及所科刑罰。
- (五) 經終局判決判定犯罪，如後因提出新證據或因發見新證據，確實證明原判錯誤而經撤銷原判或免刑者，除經證明有關證據之未能及時披露，應由其本人全部或局部負責者外，因此判決而服刑之人應依法受損害賠償。
- (六) 任何人依香港法律及刑事程序經終局判決判定有罪或無罪開釋者，不得就同一罪名再予審判或科刑。

[比照《公民權利和政治權利國際公約》第十四，二至七條]

第十二條

刑事罪及刑罰沒有追溯力

Article 8

Liberty of movement

- (1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.
- (2) Everyone shall be free to leave Hong Kong.
- (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.
- (4) No one who has the right of abode in Hong Kong shall be arbitrarily deprived of the right to enter Hong Kong.

[cf. ICCPR Art. 12]

Article 9

Restrictions on expulsion from Hong Kong

A person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

[cf. ICCPR Art. 13]

Article 10

Equality before courts and right to fair and public hearing

(一) 任何人之行為或不行為，於發生當時依香港法律及國際法均不成罪者，不為罪。刑罰不得重於犯罪時法律所規定。犯罪後之法律規定減科刑罰者，從有利於行為人之法律。

(二) 任何人之行為或不行為，於發生當時依各國公認之一般法律原則為有罪者，其審判與刑罰不受本條規定之影響。

[比照《公民權利和政治權利國際公約》第十五條]

第十三條

被承認為法律人格的權利

人人在任何所在有被承認為法律人格之權利。

[比照《公民權利和政治權利國際公約》第十六條]

第十四條

對私生活、家庭、住宅、通信、名譽及信用的保護

(一) 任何人之私生活、家庭、住宅或通信，不得無理或非法律擾，其名譽及信用，亦不得非法破壞。

(二) 對於此種侵擾或破壞，人人有受法律保護之權利。

[比照《公民權利和政治權利國際公約》第十七條]

第十五條

思想、信念及宗教自由

(一) 人人有思想、信念及宗教之自由。此種權利包括保有或採奉自擇之宗教或信仰之自由，及單獨或集體、公開或私以禮拜、戒律、躬行及講授表示其宗教或信仰之自由。

(二) 任何人所享有或採奉自擇之宗教或信仰之自由，不得以脅迫侵害之。

(三) 人人表示其宗教或信仰之自由，非依法律，不受限制，此項限制以保障公共安全、秩序、衛生或風化或他人之基本權利自由所必要者為限。

(四) 父母或法定監護人確保子女接受符合其本人信仰之宗教及道德教育之自由，得受尊重。

[比照《公民權利和政治權利國際公約》第十八條]

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[cf. ICCPR Art. 14.1]

Article 11

Rights of persons charged with or convicted of criminal offence

(1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality—

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) to be tried without undue delay;

第十六條

意見和發表的自由

- (一) 人人有保持意見不受干預之權利。
- (二) 人人有發表自由之權利；此種權利包括以語言、文字或出版物、藝術或自己選擇之其他方式，不分國界，尋求、接受及傳播各種消息及思想之自由。
- (三) 本條第(二)項所載權利之行使，附有特別責任及義務，故得予以某種限制，但此種限制以經法律規定，且為下列各項所必要者為限——
 - (甲) 尊重他人權利或名譽；或
 - (乙) 保障國家安全或公共秩序，或公共衛生或風化。

[比照《公民權利和政治權利國際公約》第十九條]

第十七條

和平集會的權利

和平集會之權利，應予確認。除依法律之規定，且為民主社會維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由所必要者外，不得限制此種權利之行使。

[比照《公民權利和政治權利國際公約》第二十一條]

第十八條

結社的自由

- (一) 人人有自由結社之權利，包括為保障其本身利益而組織及加入工會之權利。
- (二) 除依法律之規定，且為民主社會維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由所必要者外，不得限制此種權利之行使。本條並不禁止對軍警人員行使此種權利，加以合法限制。

- (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) not to be compelled to testify against himself or to confess guilt.
- (3) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 - (4) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 - (5) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 - (6) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of Hong Kong.

[cf. ICCPR Art. 14.2 to 7]

Article 12

- (三) 本條並不授權採取立法措施或應用法律，妨礙《關於結社自由及保障組織權利之國際勞工組織一九四八年公約》中適用於香港的規定所規定之保證。

[比照《公民權利和政治權利國際公約》第二十二條]

第十九條

關於結婚和家庭的權利

- (一) 家庭為社會之自然基本團體單位，應受社會及國家之保護。
- (二) 男女已達結婚年齡者，其結婚及成立家庭之權利應予確認。
- (三) 婚姻非經婚嫁雙方自由完全同意，不得締結。
- (四) 夫妻在婚姻方面，在婚姻關係存續期間，以及在婚姻關係消滅時，雙方權利責任平等。婚姻關係消滅時，應訂定辦法，對子女予以必要之保護。

[比照《公民權利和政治權利國際公約》第二十三條]

第二十條

兒童的權利

- (一) 所有兒童有權享受家庭、社會及國家為其未成年身分給予之必需保護措施，不因種族、膚色、性別、語言、宗教、民族本源或社會階級、財產或出生而受歧視。
- (二) 所有兒童出生後應立予登記，並取得名字。

[比照《公民權利和政治權利國際公約》第二十四條]

第二十一條

參與公眾生活的權利

- 凡屬永久性居民，無分人權法案第一(一)條所列之任何區別，不受無理限制，均應有權利及機會——
- (甲) 直接或經由自由選擇之代表參與政事；

No retrospective criminal offences or penalties

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- (2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

[cf. ICCPR Art. 15]

Article 13

Right to recognition as person before law

Everyone shall have the right to recognition everywhere as a person before the law.

[cf. ICCPR Art. 16]

Article 14

Protection of privacy, family, home, correspondence, honour and reputation

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.

[cf. ICCPR Art. 17]

Article 15

(乙) 在真正、定期之選舉中投票及被選。選舉權必須普及而平等，選舉應以無記名投票法行之，以保證選民意志之自由表現；

(丙) 以一般平等之條件，服香港公職。

[比照《公民權利和政治權利國際公約》第二十五條]

第二十二條

在法律前平等及受法律平等保護

人人法律上一律平等，且應受法律平等保護，無所歧視。在此方面，法律應禁止任何歧視，並保證人人享受平等而有效之保護，以防因種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分而生之歧視。

[比照《公民權利和政治權利國際公約》第二十六條]

第二十三條

少數人的權利

屬於種族、宗教或語言少數團體之人，與團體中其他分子共同享受其固有文化，信奉躬行其固有宗教或使用其固有語言之權利，不得剝奪之。

[比照《公民權利和政治權利國際公約》第二十七條]

Freedom of thought, conscience and religion

- (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- (4) The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected.

[cf. ICCPR Art. 18]

Article 16

Freedom of opinion and expression

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary—
 - (a) for respect of the rights or reputations of others; or
 - (b) for the protection of national security or of public order (ordre public), or of public health or morals.

[cf. ICCPR Art. 19]

Article 17

Right of peaceful assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

[cf. ICCPR Art. 21]

Article 18

Freedom of association

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- (3) Nothing in this article authorizes legislative measures to be taken which would prejudice, or the law to be applied in such a manner as to prejudice, the guarantees provided for in the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize as it applies to Hong Kong.

[cf. ICCPR Art. 22]

Article 19

Rights in respect of marriage and family

- (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- (2) The right of men and women of marriageable age to marry and to found a family shall be recognized.
- (3) No marriage shall be entered into without the free and full consent of the intending spouses.
- (4) Spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

[cf. ICCPR Art. 23]

Article 20

Rights of children

- (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- (2) Every child shall be registered immediately after birth and shall have a name.

[cf. ICCPR Art. 24]

Article 21

Right to participate in public life

Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions—

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in Hong Kong.

[cf. ICCPR Art. 25]

Article 22

Equality before and equal protection of law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[cf. ICCPR Art. 26]

Article 23

Rights of minorities

Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

[cf. ICCPR Art. 27]

第232章

《警隊條例》

26/04/2018

Cap. 232

Police Force Ordinance

26/04/2018

50. 涉嫌人士的逮捕、扣留與保釋以及涉嫌財產的檢取

(1) 警務人員拘捕任何他合理地相信會被控以下罪行的人，或拘捕任何他合理地懷疑犯了以下罪行的人，乃屬合法——

- (a) 任何由法律訂定判處的罪行，或有人(就該罪行首次定罪時)可被判處監禁的罪行；或
- (b) 如該警務人員覺得因以下理由將傳票送達並非切實可行，則任何罪行——
 - (i) 該人的姓名不為該警務人員所知，亦不能由該警務人員輕易確定；
 - (ii) 該警務人員有合理理由懷疑該人所報姓名是否其真實姓名；
 - (iii) 該人並無報出一個可作送達的妥當地址；或
 - (iv) 該警務人員有合理理由懷疑該人所報地址是否可作送達的妥當地址。 (由1992年第57號第2條代替)

(1A) 警務人員可根據第(1)款行使拘捕任何人的權力，即使他沒有為此而發出的手令，亦不論他是否目擊任何犯人犯

(1B) 警務人員拘捕他合理地懷疑可被遞解出香港以外的任何人，乃屬合法。 (由1992年第57號第2條增補)

(2) 任何根據第(1)或(1B)款可被合法拘捕的人，如強行抗拒為逮捕他而作的行動，或企圖逃避逮捕，則警務人員或其他人可使用一切必需的辦法，以執行逮捕。 (由1992年第57號第2條代替)

(3) 如任何警務人員有理由相信任何須予逮捕的人已進入或置身在某處，則居住在那處或管理該處的人在該警務人員提出要求時，須容許該警務人員自由進入該處，並給予一切合理的便利，以便他在內搜查。 (由1992年第57號第2條代替)

50.

Arrest, detention and bail of suspected persons and seizure of suspected property

(1) It shall be lawful for any police officer to apprehend any person who he reasonably believes will be charged with or whom he reasonably suspects of being guilty of—

- (a) any offence for which the sentence is fixed by law or for which a person may (on a first conviction for that offence) be sentenced to imprisonment; or
- (b) any offence, if it appears to the police officer that service of a summons is impracticable because—
 - (i) the name of the person is unknown to, and cannot readily be ascertained by, the police officer;
 - (ii) the police officer has reasonable grounds for doubting whether a name given by the person as his name is his real name;
 - (iii) the person has failed to give a satisfactory address for service; or
 - (iv) the police officer has reasonable grounds for doubting whether an address given by the person is a satisfactory address for service. (Replaced 57 of 1992 s. 2)

(1A) A police officer may exercise the power to apprehend a person under subsection (1) without any warrant for that purpose and whether or not he has seen any offence committed. (Added 57 of 1992 s. 2)

(1B) It shall be lawful for any police officer to apprehend any person whom he reasonably suspects of being liable to deportation from Hong Kong. (Added 57 of 1992 s. 2)

- (4) 如未能根據第(3)款獲准進入該處，則任何人在根據手令行事的情況下，及在本可發出手令但為免使須予逮捕的人有機會逃離警務人員而未取得該手令的情況下，該人進入該處及在內搜查，乃屬合法；該人如在妥為宣告其所具權能、目的及內進的要求後，仍無其他方法獲准內進時，則他為得以進入該處而擊破任何地方的外部或內部的門或窗，均屬合法，不論該地方是屬於須予逮捕的人或他人
- (5) 警務人員或其他獲授權執行逮捕的人，為使自己脫身或為使任何其他合法進入任何地方以執行逮捕而被扣留
- (6) 凡任何人被警務人員拘捕，如該人員合理地懷疑任何報章、簿冊或其他文件、以及該等報章、簿冊或文件的任何部分或摘錄、任何其他物品或實產是對調查該人所犯或合理地懷疑該人曾犯的罪行有價值的(不論就其本身或連同任何其他東西)，則在該人身上或該人被拘捕現場或現場附近搜查並取去上述各物，乃屬合法；
- (7) 但本款的規定，不得解釋為對任何個別手令所授予的搜查權力有所減損。 (由1992年第57號第2條代替)
- (2) If any person who may lawfully be apprehended under subsection (1) or (1B) forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer or other person may use all means necessary to effect the arrest. (Replaced 57 of 1992 s. 2)
- (3) If any police officer has reason to believe that any person to be arrested has entered into or is in any place the person residing in or in charge of such place shall on demand of that police officer allow him free ingress thereto and afford all reasonable facilities for search therein. (Replaced 57 of 1992 s. 2)
- (4) If ingress to such place cannot be obtained under subsection (3) it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape from a police officer, to enter such place and search therein and in order to effect an entrance into such place to break open any outer or inner door or window of any place whether that of the person to be arrested or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.
- (5) Any police officer or other person authorized to make an arrest may break open any place in order to liberate himself or any other person who having lawfully entered for the purpose of making an arrest is detained therein.

- (a) 進入及在有需要時破門闖入或強行進入該建築物、船隻或地方，並搜查及接管可能於其內尋獲的任何該等報章、簿冊或其他文件、以及該等報章、簿冊或文件的任何部分或摘錄、或任何其他物品或實產；及

- (b) 於為容許該項搜查得以進行而合理地需要的期間內，扣留任何看似是管有或控制該等報章、簿冊或其他文件、以及該等報章、簿冊或文件的任何部分或滴錄，或任何其他物品或資產的人，而該人若非如此扣留，則會妨礙該項搜查的目的者。 (由1992年第57號第2條代替)

(6) Where any person is apprehended by a police officer it shall be lawful for such officer to search for and take possession of any newspaper, book or other document or any portion or extract therefrom and any other article or chattel which may be found on his person or in or about the place at which he has been apprehended and which the said officer may reasonably suspect to be of value (whether by itself or together with anything else) to the investigation of any offence that the person has committed or is reasonably suspected of having committed:
Provided that nothing in this subsection shall be construed in diminution of the powers of search conferred by any particular warrant. (*Replaced 57 of 1992 s. 2*)

(7) Whenever it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any building, vessel (not being a ship of war or a ship having the status of a ship of war) or place any newspaper, book or other document, or any portion or extract therefrom, or any other article or chattel which is likely to be of value (whether by itself or together with anything else) to the investigation of any offence that has been committed, or that is reasonably suspected to have been committed or to be about to be committed or to be intended to be committed, such magistrate may by warrant directed to any police officer empower him with such assistants as may be necessary by day or by night—

- (a) to enter and if necessary to break into or forcibly enter such building, vessel or place and to search for and take possession of any such newspaper, book or other document or portion of or extract therefrom or any such other article or chattel which may be found therein; and
- (b) to detain, during such period as is reasonably required to permit such a search to be carried out, any person who may appear to have such newspaper, book or other document or portion thereof or extract therefrom or other article or chattel in his possession or under his control and who, if not so detained, might prejudice the purpose of the search. (*Replaced 57 of 1992 s. 2*)



檢控守則

香港特別行政區
律政司

檢控守則

2013 年

香港特別行政區
律政司

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引言

《檢控守則》是一套聲明和指令，指引檢控人員執行檢控工作，並同時旨在令其他人對檢控人員處理檢控的取向做法及所考慮的因素有更透徹的認識。檢控人員應視之為指引，使用時還要顧及個別事宜或案件所涉及的問題和情況。“公正執行公義之法，維護公正法治精神”，十分重要，《檢控守則》通篇內容皆奉此為圭臬。

檢控的首要考慮因素在於是否有利大眾。檢控工作是否執行妥當，刑事司法重責是否推展得宜，令罪有應得的人治罪，還無辜者清白，都是與公眾切身利益攸關。檢控人員代表社會肩負重大職責，確保時刻以同等的尺度，不偏不倚地秉行公義。公眾期望檢控人員以專業精神和純熟技巧履行職責，並堅守誠信，遵循明確而清晰的檢控政策指引行事。

對個人或實體提出檢控與否，向來都是重要決定。檢控人員在作出決定前，必須全面評估證據及情況，尤其須要回答兩條問題。首先，提出或繼續進行法律程序，證據是否充分？第二，假使證據充分，提出檢控是否符合公眾利益？檢控人員必須時刻按公眾利益行事，審慎和公正執法，同時以公眾利益考慮為依歸或主導。檢控人員在個別案件中決定公眾利益何在時，必須考慮在該情況下如何秉行公義，並須審視所有因素。這固然會因案情而異，但一般而言，所干犯的罪行愈嚴重，便愈有必要為公眾利益而提出檢控。

編訂《檢控守則》的目的，除了為檢控人員提供行為守則，確保他們在刑事檢控程序各階段所作的決定都是公平、公正和一致外，也希望藉此使社會人士明瞭刑事檢控制度如何運作。公開、負責，以及堅守原則、獨立自主的專業態度，都是檢控人員秉行公義的主要目標。

律政司致力確保司法制度公開公正，力求為市民提供持平和具透明度的檢控服務。公眾有權知道，檢控人員在整個刑事訴訟程序中是依據以原則為基礎的準則作為指引，也有權親自瞭解這些是什麼準則。

檢控人員的責任，是以最高的專業標準處理刑事案件。檢控人員待人須坦誠正直，也應體恤和體會罪行受害者和證人的景況。被起訴的人有權受到尊重和公平對待，故即使是罪行的疑犯或被告的利益，檢控人員亦必須一絲不苟地予以維護。檢控人員公正，審訊始能公平。

《檢控守則》旨在：

- (a) 促進檢控工作貫徹一致，杜絕不同案件出現不必要的不當差異；
- (b) 提倡規律有序，避免墨守成規；
- (c) 利便在恪守原則之餘又能靈活地行使酌情權；
- (d) 確保有效持平地履行檢控責任；
- (e) 令社會人士及被告有信心，確信每宗案件都會按理據，以理智和客觀態度作出檢控決定；
- (f) 為檢控人員提供參考基準和指引；
- (g) 協助培訓檢控人員；
- (h) 確保檢控人員為檢控決定承擔責任；
- (i) 加深各機關之間瞭解，令合作更協調暢順；
- (j) 讓市民知悉現行程序和應用標準；
- (k) 向國際社會展示香港的應用標準和原則。

1990年，第八屆聯合國預防犯罪和罪犯待遇大會通過《關於檢察官作用的準則》。有關準則為香港的檢控人員提供指引，全文載於附錄I。

《檢控人員專業責任守則和主要職責及權利的聲明》在 1999 年獲國際檢察官聯合會通過，並在 2008 年獲第十七屆聯合國預防犯罪和刑事司法委員會通過成為決議。該份文件為香港的檢控人員提供指引，全文載於附錄 II。

1 檢控人員的獨立性

概論

1.1 檢控人員行事須以廣大公眾的利益為依歸，但作為“秉行公義者”則獨立自主。在作出決定和行使酌情權時，檢控人員必須根據法律、可接納的證據所證明的事實、控方已知的其他相關資料，以及任何適用的政策或指引，公正理智地行事。

1.2 檢控人員不得受下列因素影響：

- (a) 任何涉及調查、政治、傳媒、社羣或個人的利益或陳述；
- (b) 檢控人員對罪行、疑犯、被告或罪行受害者的個人感受或看法；
- (c) 作出的決定對處理案件的人在個人或專業方面可能造成的影響；
- (d) 對政府、任何政黨、任何團體或個人在政治上可能帶來的影響；
- (e) 傳媒或公眾對有關決定的可能反應；
- (f) 疑犯、被告或任何其他涉案或相關人士的種族、宗教、性別、人種或國籍、膚色、語言、政見或其他主張、社會階級、社會或政治連繫、公職地位或其他社會地位、合法活動、信念、財產、健康狀況、殘疾，或任何其他個人特性（即使或需基於其他原因而顧及這些考慮因素）。

律政司

1.3 香港特別行政區《基本法》第六十三條訂明，律政司“主管刑事檢察工作，不受任何干涉”。這項獨立性受憲法保障，可確保律政司的檢控人員獨立行事，不受政治或其他不當或不必要的壓力左右。

律政司司長

1.4 律政司司長是律政司的首長。上訴法庭在有關 C (破產人) 的事宜 [2006] 4 HKC 582 一案第 590 頁指出：

“律政司司長能作出獨立檢控，是法治的關鍵……‘是否向市民提出檢控或停止檢控，應由檢控機關根據每宗案件的理據而決定，不受政治或任何壓力所影響。’ [Robert Finlay 爵士，1903 年]……這些陳述……反映了香港司法管轄區所接受並應用的基本原則，而這原則得以繼續應用，是受《基本法》保障，這亦是《基本法》的整個主旨（特別是第六十三條）。”

1.5 律政司司長負責施行刑事法、制定檢控政策，以及監督刑事檢控專員及律政司刑事檢控科的檢控人員。司長授予檢控人員各項權力，並為檢控人員的決定負責。

2 刑事檢控專員

2.1 刑事檢控專員是律政司刑事檢控科的首長，負責刑事檢控科的運作。

2.2 專員代表香港特別行政區就案件提出檢控，並處理檢控工作。專員就下述職務向律政司司長負責：

- (a) 指導刑事檢控工作；
- (b) 就刑事法相關事宜向司長提供意見，但司長授權專員自行決定的具體事宜除外；
- (c) 就一般檢控事宜或可能導致提出檢控的個別調查，向執法機關提供法律指引；
- (d) 制定和推展刑事檢控政策；
- (e) 就刑事法的發展、執行與實施，向政府提供意見。

3 檢控人員的角色及職務

角色及職能

3.1 檢控人員必須遵行和提倡法治。檢控人員代表社會，行事不偏不倚，負責“秉行公義”。為此，檢控人員必須公正客觀地協助法庭找出真相，於社會與被控告之間，依法秉公行義。

3.2 加拿大最高法院法官 Rand 在 *Boucher 訴 女皇* [1955] SCR 16 一案第 23 及 24 頁指出：

“必須強調一點，就是刑事檢控的目的，並非為求取定罪，而是要將控方認為與所指稱罪行相關的可信證據，向陪審團展示。檢察官有責任確保展示有關事實的全部所得法律證據：展示證據須鏗而不捨，在合法情況下據理力爭，但也須公正持平。檢控人員不可存有任何勝敗之心；其職能純粹是為公眾服務，在所有公職人員當中，他承擔的個人責任，無人能及。檢控人員應本著司法程序固有的威信、尊嚴和公義感，有效地履行其職責。”

3.3 檢控人員在對辯和對抗式訴訟制度下履行職務。檢控人員擔當訟辯職責時，必須自持克制；但就某爭議點申述控方立場時、驗證被告代表所持的立場或所提出的證據時，以及在有需要就此作出抨擊時，則可保持堅定立場，謙恭有禮地進行訟辯。

3.4 檢控人員的職責，屬於刑事司法過程的主要一環。刑事司法過程包括調查、檢控、辯護、審裁及懲處。他們在此過程中所負責的工作和取得的成果，必須具專業水準和達到可合理取得的最高水準。檢控人員在刑事司法過程中應恰如其分堅守崗位，不應試圖僭越本分。

3.5 在訴訟過程中，檢控人員必須公正地做到下述各點：

- (a) 尋求把相關和可信的證據以完整無缺及清晰易明的方式提上法庭；
- (b) 提出準確和完整的法律論點，使有關論點可適當引用於事實上，以協助法庭審理案件；
- (c) 使用的言語或行為，不應令法庭對被告及辯方證人產生憤怒情緒或偏見，也不應尋求以諷刺或其他方式揶揄被告或辯方案情理據；
- (d) 不應發表任何個人意見，尤其是有關證據是否可信或被告是否有罪的意見；
- (e) 檢控人員如合理地認為案件明顯沒有合理機會達至定罪，便須請求法庭停止法律程序。

3.6 檢控人員如無合理理由相信所主張的事實或法律論點有證據份量或可合理地有助法庭達成裁決，則不得以此爭辯。向證人（包括被告）指出的資料，必須有合理理由認為是準確和可靠，而且使用有關資料屬情況所需。

3.7 除非檢控人員有合理理由相信可從檢控人員已獲得的材料中取得支持其案件的某方面證據，否則不得引導法庭或辯方相信控方持有這方面的證據。

3.8 檢控人員必須時刻協助法庭避免犯上可導致上訴的錯誤，並須在審訊過程或判刑程序中，致力糾正在法律或事實方面明顯可見的錯誤。

公平

3.9 檢控人員應及早在開審前備妥及整編控方所獲得的全部相關證據。作為一般規則，控方在陳述案件理據時，應提供所有證據。控方應告知法庭及辯方可能適用的案例、告誡及指示，即使如此對控方不利亦然。

3.10 控方必須在所得的相關材料中，識別任何可能不可接納為證據的材料（原因包括該等材料看來是非法或不當地取得）。控方可拒絕援引該等材料，並履行披露責任，告知辯方該等未經採用的材料。如控方決定提出該等材料作為證據，必須通知辯方。如辯方反對該等材料被接納為證據，則可由法庭裁決。

3.11 檢控人員還要肩負社會責任，秉持公正，在合理情況下盡可能以有效快捷的方式執行檢控責任。

人權

3.12 檢控人員履行的職責，可對疑犯、被告、受害人、證人和其他公眾人士的人權帶來重大影響。在進行刑事法律程序時，檢控人員有責任注意這些權利及其來源，並按情況而定予以尊重或確保這些權利可得以行使。

3.13 《基本法》及《香港人權法案條例》(第 383 章)訂明香港居民及其他人的基本權利。在進行刑事法律程序時,可能會涉及當中多項權利而須納入考慮。檢控人員必須明白這些文書對其工作的影響,並時刻遵行這些文書的規定。

3.14 《基本法》第八條訂明保留香港原有法律,包括普通法。《基本法》第三十九條規定,《公民權利和政治權利國際公約》適用於香港的有關規定繼續有效,通過香港特別行政區的法律予以實施。《人權法案》是實施上述公約適用於香港的有關規定的主要文書。

3.15 檢控人員必須格外注意被告在檢控過程中所享有的相關權利,包括《基本法》第二十五、三十五和八十七條(《人權法案》第十和十一條)所保證的權利,即在法律面前一律平等、得到秘密法律諮詢的權利、假定無罪的權利,以及盡早接受公正審判的權利。

3.16 在決定應否提出檢控或繼續檢控案件時,必須考慮被告和訴訟各方的權利。檢控人員必須清楚《基本法》所確認的下列權利:言論自由(《基本法》第二十七條;《人權法案》第十六(二)條);人身自由不受侵犯(《基本法》第二十八條;《人權法案》第五條);住宅不受侵犯(《基本法》第二十九條;《人權法案》第十四條);通訊自由和通訊秘密(《基本法》第三十條;《人權法案》第十四條);遷徙往來自由(《基本法》第三十一條;《人權法案》第八條);以及宗教信仰自由(《基本法》第三十二條;《人權法案》第十五條)。

4 調查與檢控工作

4.1 調查人員搜集證據及其他材料,檢控人員則以此為依據。調查人員絕非檢控人員的“當事人”,也不向檢控人員作出“指

示”。然而，檢控人員與調查人員當然亦會就案件保持溝通進行商討及考慮對方的意見。

4.2 儘管調查及檢控雙方各有獨立明確的職能，且由具備不同技能及資源的專職人員負責執行，但仍應繼續鼓勵及促進調查人員與檢控人員之間建立緊密合作關係。

由調查人員提供協助及向調查人員作出指引

4.3 檢控人員可要求作進一步調查，但不可掌管或指導調查工作。調查人員可向檢控人員尋求法律、控罪及證據方面的指引，這包括下列事宜：

- (a) 可提出及恰當的控罪；
- (b) 證據是否足以提出檢控；
- (c) 證據是否可獲法庭接納；
- (d) 現行的相關法律；
- (e) 恰當的審訊法庭；
- (f) 披露材料；
- (g) 提出上訴或覆核。

5 檢控決定

5.1 《刑事訴訟程序條例》(第 221 章)第 15(1) 條述明：

“律政司司長在任何案件中如認為為了社會公正而不需要其參與，則並非一定需要檢控任何被控人。”

5.2 該條文所指的酌情權同樣適用於刑事檢控專員，以及獲授權而代表律政司司長行事的檢控人員。

5.3 該條文的作用，是認同在普通法下一般公認及行之已久的國際慣例—檢控決定包括兩個必要部分。第一，所得的可接納證據充分支持提出或繼續進行法律程序。第二，基於一般公眾利益，必須進行檢控。

證據是否充分

5.4 控方必須在法律上有充分證據支持檢控，即是這些可接納和可靠的證據，連同可從這些證據作出的任何合理推論，相當可能會證明有關罪行。

5.5 驗證標準是：根據這些證據，是否有合理機會達致定罪。要符合這項驗證標準，檢控人員必須先行對下列事宜作出判斷：

- (a) 所獲得的證據；
- (b) 對這些證據是否可接納及/或是否可靠的任何可能質疑；
- (c) 證人是否可出庭作供、證人的作證資格、證人證供的可信程度，以及法庭可能對證人作出的評估；
- (d) 任何可合理預期的相反證據；
- (e) 辯方可能提出的辯護；
- (f) 合理的事實審裁者在妥為獲悉有關法律後，按照案件所有證據及論點會如何作出處理。

5.6 檢控人員在證人方面需要考慮以下事項：證人的記憶是否可靠、是否有誇大其詞的指控、與被告有沒有聯繫（有利或不利聯繫）、是否有隱瞞部分事實的動機、證人能否出庭作供、證

人的心理或其他個人特性(包括證人是兒童或無行為能力的人)、證人是否易受辯方攻擊。

5.7 案件不符合這項驗證標準卻繼續進行檢控，便不合乎公眾利益。必須負責任地將檢控所需的資源只應用於公平而相當可能有效的法律程序。

公眾利益

5.8 即使符合第一部分的檢控驗證標準，檢控人員還須考慮第二部分有關公眾利益的規定。

5.9 進行這項評估需要考慮的因素，不可能全部盡列，但當中包括：

- (a) 罪行的性質及情況，包括任何導致加重刑罰或減輕罪責的情況；
- (b) 罪行的嚴重程度：較嚴重的罪行，較大可能會基於公眾利益而進行檢控，這些較嚴重的罪行包括令受害者遭受重大傷害或損失的罪行，或涉及多名受害者的罪行；
- (c) 檢控對香港執法工作優先次序的影響；
- (d) 檢控有否任何延誤及其因由；
- (e) 觸犯的罪行是否輕微、屬技術性質、過時或含糊不清；
- (f) 疑犯的刑事罪責程度；
- (g) 涉及其他疑犯共同犯案；
- (h) 疑犯有否與執法機關合作或表現悔意：如疑犯作出承認、表現悔意、已補償受害者及／或在檢控他人的程序中與當局合作，則不檢控疑犯也可符合公眾利益；
- (i) 疑犯的任何犯罪紀錄；

- (j) 疑犯、證人及 / 或受害者的態度、年齡、本質、身體或心理狀況；
- (k) 案件可能的最終處置安排；
- (l) 罪行是否普遍及檢控是否有阻嚇力；
- (m) 會影響任何法律程序公正的特殊情況；
- (n) 檢控以外的其他可行方法（例如警誡、警告或其他可接受的處理辦法）及這些方法的成效。

精神狀況

5.10 刑事司法制度具有保護社會及社會每一分子的作用。控方可能不時認為，宜對精神病患者起訴適用的罪名，主要目的是通過法庭行使其司法管轄權，作出有利於照顧和保護精神病患者及保護社會的命令。

6 同意檢控

6.1 若干類別的案件在提出檢控前，律政司司長須預先給予同意。這項保障措施確保某些特別案件獲得適當程度的審視。因此，檢控人員應考慮法律有否規定須先取得同意。刑事檢控專員及高級檢控人員已獲授權，可就某些案件作出同意檢控的決定。

7 私人檢控

7.1 按照普通法，人人皆有權為公眾利益提出刑事檢控。

7.2 根據《裁判官條例》(第 227 章)第 14 條,申訴人或告發人可親自或由其法律代表進行檢控。

7.3 律政司司長有權介入私人檢控程序並接手進行檢控,成為當時法律程序中的一方,取代原來檢控一方。由私人檢控而展開的法律程序,律政司司長可繼續該等法律程序,也可拒絕簽署控罪書或公訴書,從而阻止該等法律程序繼續進行(見《區域法院條例》(第 336 章)第 74 和 75 條,以及《刑事訴訟程序條例》(第 221 章)第 17 條)。在決定是否介入私人檢控前,會先根據《檢控守則》決定往後的檢控行動。

7.4 決定是否接管私人檢控,有其考慮因素,其中包括以下各項:

- (a) 維護社會公義;
- (b) 罪行的嚴重程度;
- (c) 有利害關係一方的意見;
- (d) 訴訟是否重複;
- (e) 與律政司的決定是否一致;
- (f) 是否有機會進行公平審訊。

律政司司長可同時考慮原來檢控一方的行為操守。

8 檢控常規與程序

處理控罪

8.1 控方選擇控罪時,應致力於充分反映指稱罪行的刑責,方式為既能兼顧檢控效率亦能令法庭於社會與被告兩者之間秉

公行義。在合理可行的情況下，控罪的數目應盡量減少。如被告涉及多項性質相同的指稱罪行，便應考慮提出具代表性的控罪。在被告同意下，未審理的額外控罪於量刑時可一併考慮。

審訊法庭

8.2 有些罪行的審訊須在裁判法院進行，有些罪行的審訊則須在區域法院或原訟法庭循公訴程序進行，也有一些罪行兩者皆可。如純屬簡易程序罪行，可以與可公訴罪行一併審訊，唯其審訊不可在原訟法庭進行。

8.3 《基本法》第八十六條訂明：“原在香港實行的陪審制度的原則予以保留。”

8.4 在選定審訊法庭時，檢控人員應考慮以下各點：

- (a) 法庭審理罪行時可判處的最高刑罰：裁判法院（一般為監禁 2 年）、區域法院（監禁 7 年），以及原訟法庭（訂明的最高刑罰）；
- (b) 整體案情；
- (c) 指稱罪行的嚴重程度；
- (d) 可能有爭議的事宜；
- (e) 法律程序對公眾的重要性；
- (f) 被告是否在社會上有地位、身負重任或處於受信崗位；
- (g) 須予裁定的爭議事宜是否涉及社會的標準及 / 或價值觀；
- (h) 任何加重或減輕刑罰的因素；
- (i) 被告的背景紀錄。

在考慮上述各點後，檢控人員應從可供選擇的審訊法庭中，選出最合適審理有關事宜並能對涉案罪行的刑責判處足夠刑罰的相關法庭。如案件涉及有組織罪行，檢控人員應考慮加重刑罰的可能性。

9 犯罪得益

9.1 檢控人員可根據《有組織及嚴重罪行條例》(第 455 章)和《販毒(追討得益)條例》(第 405 章)的條文申請限制令和沒收令。

9.2 針對犯罪得益而發出的限制令和沒收令，並非旨在向犯罪者施以附加懲罰，而是要防止犯罪者從其犯罪行為獲益，因此，這些命令不應視為附加於檢控程序或判刑的一個選擇，而應按每宗案件的理據主動予以考慮。這些命令旨在落實一項重要的公共政策，就是任何人均不得從嚴重罪行的得益或通過犯罪行為獲利。

9.3 在法律程序展開時，控方即須考慮合適的命令處理涉案財產，不論該等財產是用以犯罪或視為犯罪得益。控方通常會在刑事法律程序開始時申請限制令，以確保涉案財產不會被耗散，並可於定罪後法庭發出任何沒收令時，用作繳付所須支付的款項。

10 覆核和停止檢控

10.1 檢控人員有責任持續覆核已展開的檢控工作。隨著情況有變，假如在任何階段重新應用檢控驗證標準而顯示有關證據

不再足以確保有合理機會達至定罪，或繼續進行檢控不會符合社會公義，便應停止檢控。

10.2 假如已決定在某情況下不進行檢控或停止檢控，則只可在理由充分的情況下才可改變先前的決定，這些情況包括：

- (a) 基於某些錯誤或疏忽，導致所作決定經覆核後發現明顯錯誤；
- (b) 在較後階段才獲得案中原先沒有預期可獲得的重要證據；
- (c) 在繼續進行搜證工作時暫時停止檢控（被告會獲事先告知可能會改變先前的決定）；
- (d) 透過欺詐、不誠實或不正當方式令檢控停止。

司法覆核

10.3 律政司司長或獲授權的檢控人員獨立作出的檢控決定，或在刑事法律程序期間作出的決定，只在罕有和特殊情況下才會受到司法覆核。在審訊中作出的決定也是如此，原因是避免刑事審訊程序割裂。覆核的命令只能要求律政司司長因應法庭的裁斷重新考慮有關決定。

中止檢控

10.4 在高等法院原訟法庭進行的公訴法律程序、在區域法院提出控罪的法律程序，以及就可公訴罪行在裁判法院進行的法律程序，可以藉提出中止檢控書而擱置，但必須按律政司司長的指示才可提出。

10.5 中止檢控書只能擱置檢控程序，但在符合社會公義的情況下可重新展開檢控。這屬於特殊程序，可引用這程序的情況包

括：被告在認知或身體方面可能永久喪失能力，或防止有人妨礙社會公義（例如即使押後法律程序也不足以處理證人受到干擾的情況）。

簽保命令

10.6 如某人承認本身過失而沒有被定罪，法庭可判該人簽保，以保證該人會依照具體條件遵守法紀及／或保持行為良好。法庭必須認為，根據事實可恰當推斷會有風險，該人日後有可能破壞社會安寧。該人必須獲得通知有關的處理方法。如該人沒有辦理擔保手續或違反擔保條款，可被控藐視法庭。

10.7 這項程序特別適用於初犯者及輕微罪行個案。犯罪者須在公開聆訊中承認所犯過錯及接受告誡，然後向法庭承諾守行為，為期最長兩年；如違反承諾，則須另受懲處，最高可判處監禁 6 個月（見《裁判官條例》（第 227 章）第 61 條）。這項程序既能符合公義防止犯罪者再犯案，也可讓犯罪者改過自新。控方決定是否同意按具體條件採取該程序時，必須考慮下列因素：

- (a) 提出檢控是否符合公眾利益；
- (b) 犯罪者承受的後果，會否與罪行的嚴重程度毫不相稱；
- (c) 若被定罪可能帶來什麼刑罰；
- (d) 犯罪者的年齡、犯罪紀錄、品格、精神狀態（犯案時及現時）；
- (e) 受害者的意見；
- (f) 犯罪者對有關罪行的態度。

11 豁免檢控

11.1 原則上，在刑事司法程序中，雖然理應無須藉豁免起訴證人，證人才會作供指證其他共同參與刑事犯罪的人，但在某些情況下，這是被認為恰當的做法。根據一般規則，從犯亦應被檢控，不論其後從犯會否被傳召作證人。較可取的做法，是留待審訊後才處理願意合作的從犯。一般而言，從犯可獲減刑，以反映其合作性質和程度。

11.2 在某些執法工作範疇，須依靠或主力借助線人的證供才可成功檢控。只有在司法公義有所需要的情況下，線人才應作為控方證人。由此一方面要維護社會利益令犯罪者被定罪，而另一方面要向可能與犯罪活動有密切關連甚至有份參與其中的人給予好處，兩者之間便須求取平衡。一般而言，線人所作的證供，應該是被認為令其他人定罪所必需的證供，而且是別無可求。

11.3 在某些特殊情況下，控方可豁免檢控證人。在決定是否豁免檢控和權衡利害的過程中，會深受下列因素影響：

- (a) 證人可作證供的性質，以及該等證供對案件檢控的重要程度；
- (b) 證人的背景紀錄；
- (c) 證人予人感覺的可信程度（包括是否全面披露所知的事實和事情），以及有否任何可察覺隱瞞部分真相的動機（包括收取、獲承諾或期望可得到利益）；
- (d) 證人在檢控的罪行中參與的程度（一般應低於被檢控犯罪者的參與程度）；
- (e) 是否有任何支持證據。

11.4 根據規定，須由首長級人員給予起訴豁免。控方會向證人發出免予起訴書，並在審訊前把副本交予辯方，以及在審訊時提交法庭。

12 披露材料的責任

12.1 《基本法》第八十七條賦予被告接受公平審訊的權利。維護公平的其中一項保障是控方須把所獲得或已知的相關或可能相關的材料（或關鍵資料，而且不限於可被接納的證據）全面和適時向辯方披露，不論該等材料是否有助證明控方的案情理據，還是經控方切合實際評估後可合理視為：

- (a) 與案中爭議點相關或可能相關的；
- (b) 會提出或可能提出新爭議點，而該爭議點並非控方擬採用的證據所能明顯顯示；或
- (c) 有確切可能（而非憑空想像）導致上述 (a) 或 (b) 項的證據。

12.2 披露材料的責任，在法庭席前由預審一直至刑事法律程序結束為止，都是控方須持續執行的明確責任。

12.3 控方須披露的材料包括：

- (a) 控方尋求援引的所有證據（證人陳述書、證明文件、書面證物、電子紀錄、照片及/或合理取得物理性證據）；
- (b) 被告、投訴人、控方證人或已故受害者以往的定罪紀錄；
- (c) 控方證人的已知並可能合理地影響其誠信的有損信譽行為（包括紀律處分紀錄），這都相當可能成為案件的重要爭論點；

(d) 控方已知並在法律程序中可能有助辯方的材料（包括證人陳述書）。

12.4 控方假如知悉，須予披露的相關材料由政府機構或公共機構管有，必須按情況採取合理的步驟取得該等材料，並向辯方指明該等材料，以及在未能取得有關材料時告知材料所在之處。

12.5 假如披露一些材料（如線人或臥底人員的身分、以保密形式向調查人員提供的資料、可能損害政府運作（包括繼續進行的調查）的資料），可能會損害一般公眾利益，可以公眾利益為由豁免披露該等材料。在這些情況下，一方面要對被告公平，另一方面要保障公眾利益，兩者之間便須求取平衡。有時候，應請求法庭就這些爭議作出裁決。

12.6 有些材料會受法律專業保密權保護，例如檢控人員向調查人員提供的機密法律指引，該等材料一般不得披露。控方準備案件時所製備的內部紀錄及材料，也可以是不得披露。

12.7 假如材料只關乎辯方證人或被告的誠信，控方無須向辯方作出披露。

12.8 案例也可借鑒，包括香港特別行政區 訴 李明治及證券及期貨事務監察委員會 (2003) 6 HKCFAR 336 案、女皇 訴 Keane (1994) 99 Cr App R 1 案，以及香港特別行政區 訴 劉毅昭 [2002] 2 HKC 591 案。

13 答辯商討及協議

13.1 作為解決方案，辯方或會邀請控方，考慮同意讓被告承認較少的控罪或較輕的罪名。控方也可主動向辯方提出這類建議，但情況罕見。於此情況下，必須符合三項驗證標準：

- (a) 控方有可被接納的證據，證實提出認罪之所指控罪；
- (b) 有關控罪充分反映被告在指稱罪行的刑責；
- (c) 有關控罪讓法庭有充分空間判以與刑責相抵的恰當刑罰。

13.2 通常隨著商討答辯，控辯雙方會同意事實陳述，交給法庭作為判刑根據。有關陳述不可扭曲可證明的事實，或刻意營造為判刑提供基礎。在若干情況下，控辯雙方或無法同意某些事實，而可能需召開一般稱為“Newton 研訊”的訴訟程序，援引證據，讓法庭解決爭議點，從而作出判刑。

13.3 接納被告承認恰當的控罪，可節省大量時間和開支。受害者及證人也無須承受作供所帶來的壓力和不便。這種解決方案讓刑事司法程序可更有效地運作，而不減其效益和市民的支持。

13.4 假如被告就有關控罪堅持自己清白，控方不得接受商討答辯。

13.5 在所有商討答辯的案件中，檢控人員應在適當情況下諮詢案件的主管調查人員及罪行受害者，目的是讓他們知道控方打算採取什麼行動及箇中理據。檢控人員必須聽取他們的意見，並在作出決定時予以合理考慮 — 這不是當作指示考慮，而是另一有助作出知情決定的途徑。

14 罪行受害者及易受傷害證人

14.1 檢控人員應參考 2007 年《罪行受害者約章》和刑事檢控科發表的《對待受害者及證人的指引》。

14.2 罪行受害者及易受傷害證人（因年齡、心理或身體狀況）在法律程序中須受特別關注及有特別需要。如不予理會，他們的作供能力或會受到影響而未能提供有效證據。

14.3 利便市民舉報罪案，方便有效檢控案件，是合乎公眾利益的。對舉報罪案的人士給以尊重和體諒，並在刑事司法過程中予以支持，可提高這方面的成效。

14.4 受害者有權獲詳細解釋他們在法律程序中擔當什麼角色，並有權在進行法律程序期間就所採取的行動及該等行動對其權利的影響獲得諮詢。對於他們在會面和法庭上要憶及和講述個人慘痛經歷，亦應嘗試盡力減輕他們所承受的傷痛。

14.5 罪行受害者有權：

- (a) 受到禮貌對待和尊重；
- (b) 知悉案件的進展情況；
- (c) 得到檢控人員和調查人員考慮他們的意見；
- (d) 獲提供適當的法庭設施；
- (e) 在適當情況下讓法庭知悉他們的情況和意見；
- (f) 享有私隱權和保密權。

14.6 在初審及上訴時，可能需要向法庭提交受害者所受影響的評估報告，也可能需要取得最新的醫療檢驗報告作呈堂之用。

14.7 易受傷害證人不論是否罪行受害者，其權利、期望及個人情況應同樣受到尊重。他們包括兒童、精神上無能力人士，以及感到惶恐的證人。對易受傷害證人或罪行受害者，適宜藉以下方法向他們提供保障：

- (a) 以電視直播聯繫方式提供證據；
- (b) 播放電子預先錄影證據；
- (c) 設置屏障；
- (d) 非公開聆訊；
- (e) 加快聆訊；
- (f) 連續聆訊；
- (g) 安排支援者；
- (h) 法庭審訊不拘形式；
- (i) 特別保安措施。

14.8 如果適宜由法庭就案中的有關傷害或損失下令作出補償及/或發出復還令，檢控人員應確保法庭全面而恰當地獲知所有相關情況。

15 少年犯

15.1 要檢控少年，必須首先顧及他們的福利，這項法律規定行之已久。現訂有特別的程序條文，適用於年齡未滿 16 歲少年。這類案件應盡量加快聆訊，並在少年法庭進行檢控。

15.2 為此，控方通常選擇以刑事檢控以外的其他方法處理涉及少年的指控，除非有關罪行十分嚴重，又或者基於其他情況須為公眾利益而提出檢控。

15.3 如果檢控純粹為了令法庭對少年行使權力令其在福利上獲得照顧，則屬濫用程序。如檢控人員認為有理由提出監管法律程序，並認為這樣較符合整體公眾利益，便應請調查人員考慮作出適當的轉介。

15.4 在決定檢控少年是否符合公眾利益時，應特別考慮下列因素：

- (a) 指稱罪行的嚴重程度；
- (b) 少年過往的背景紀錄；
- (c) 少年的年齡、能力及心智和身體的表面成熟程度；
- (d) 少年從家庭和其他人可得的支援；
- (e) 當時的學業或就業安排；
- (f) 可供法庭選擇的判處刑罰；
- (g) 檢控以外的其他可行方法（例如警誡）及這些方法的成效。

16 沒有法律代表的被告

16.1 如果被告沒有法律代表，檢控人員必須謹慎行事，而可能需要在互相抵觸的要求之間取得平衡。秉持公義的職責要求檢控人員確保被告適當地得悉控方的案情理據及控方會採取的行動。法庭要確保法律程序公平地進行，這是其凌駕一切的責任，而檢控人員應在法律程序進行期間適當地行事和回應，以協助法庭履行上述責任。雖然檢控人員並無責任向沒有法律代表的被告提供任何意見，但為維護司法公義起見，也應確保沒有法律代表的被告尋求或申請法律代表或協助。

16.2 檢控人員與沒有法律代表的被告溝通時，應保持適度距離。雙方較適宜以書面溝通，並可經由法庭代為進行。檢控人員應避免致電與對方溝通，如有需要也應由執法人員代勞。如要親自聯絡他們，應安排一名可靠人士在場以書面記錄任何談話內容。

16.3 控方不應主動與沒有法律代表的被告商討答辯，而商討答辯應盡可能在一名可靠人士在場下審慎進行，並以適當方式記錄商討的內容。

17 家庭暴力案件

17.1 檢控人員應參考刑事檢控科發表的《檢控家庭暴力案件指引》。

17.2 檢控家庭暴力案件時，控方必須考慮受害者、任何受影響兒童及其他有關人士的安全，並應考慮受害者家庭的情況，以及提出檢控對其家庭成員可能造成的影響。

17.3 家庭暴力持續愈久，愈有可能更趨頻密和嚴重。因此，即使受害者不欲訴諸檢控，檢控人員也可能須按照有關規範準則提出檢控。控方作出檢控決定時，必須考慮受害者的安全和公眾利益。

17.4 在決定所採取的行動時，控方應考慮：

- (a) 指稱犯罪行為的客觀嚴重程度，包括有否使用武器，以及有否服用酒精或藥物；
- (b) 受害者（身心）受到的傷害；
- (c) 被告再次犯案的風險；
- (d) 是否有預謀干犯指稱罪行；
- (e) 干犯指稱罪行之前或之後有否作出恐嚇；
- (f) 干犯指稱罪行時是否有兒童在場；
- (g) 受害者或任何涉案人士的健康及安全是否持續受到威脅；

- (h) 被告與受害者當前的關係狀況；
- (i) 被告與受害者以往的關係，特別是有否暴力行為的前科；
- (j) 被告是否有犯罪紀錄，特別是暴力罪行。

17.5 如果受害者不願意作證，控方在決定強迫作證前，必須慎重考慮，而如果受害者是被告的配偶，則須參考《刑事訴訟程序條例》(第 221 章)第 57 及 57A 條。檢控人員可根據《刑事訴訟程序條例》(第 221 章)第 65B 條的規定，在受害者同意下使用受害者的陳述書作為證據，而無須要求受害者出庭作供。檢控人員還應考慮應否採用特殊程序。

18 剝削他人案件

18.1 《世界人權宣言》第一條訂明，人人生而自由，在尊嚴和權利上一律平等。剝削他人和為此而販運人口，兩者都是嚴重罪行，違反多種基本人權和自由。販運人口涉及為剝削目的而通過以下手段進行招募、運送、轉移、窩藏或接收：

- (a) 暴力威脅或使用暴力手段，或其他形式的脅迫；
- (b) 誘拐；
- (c) 欺詐；
- (d) 欺騙；
- (e) 濫用權力或欺凌弱勢；或
- (f) 給予或收受付款或利益以取得某人的同意，而該人是對另一人有控制權的。

除了關於手段的規定外，販運兒童涉及上述各項元素。

18.2 剝削他人包括多項貶低人類價值的活動，例如性剝削、強迫勞動、家庭奴役、債役、摘取器官等，在本地和國際層面備受關注，檢控人員處理這類案件時，應對此有適當理解、技巧和敏感度。在適當情況下，如被告人或預定被告人聲稱是販運人口的受害者，檢控人員應考慮這聲稱是否可信。如聲稱可信，檢控人員應適當地處理案件，同時緊記該人是販運人口的受害者。就此，檢控人員可參考與販運人口受害者有關的適用國際標準和做法。

19 公眾秩序活動

19.1 《基本法》第二十七條保障香港居民享有“言論、新聞、出版的自由，結社、集會、遊行、示威的自由……”。《香港人權法案》第十六、十七及十八條為在香港的其他人士提供相同的保障。

19.2 如有聲稱指干犯的罪行是同時涉及行使這些受憲法保障的自由，檢控人員或需作出特別考慮。一方面，當局有明確責任採取合理而適當的措施，讓合法的集會和平進行；另一方面，有需要依法維持公眾秩序，以保障市民的人身和財產安全。

19.3 只有當有關行為超出理智範圍或合理界線的限度，才應提出刑事檢控（楊美雲訴香港特別行政區（2005）8 HKCFAR 137 案）。對於涉及公眾秩序活動的案件，必須求取平衡，既要符合社會利益維持公眾秩序，亦要讓大眾人士可合法及和平地行使自身權利。

20 專家證人

20.1 法庭可聽取專家的證據，專家可能為法庭提供其經驗及知識範圍以外的資料。提供專家證據的人，必須具備相關專長範圍所需的資格、知識及經驗。專家證人協助法庭的責任凌駕一切，他們並應就其專長範圍的事宜提供客觀及不偏不倚的意見，藉以向法庭提供獨立證據。為維護公義，檢控人員應確保時刻符合這些規定。

20.2 檢控人員應參考刑事檢控科所訂定的《專家證人指引》。

21 定罪後

判刑

21.1 檢控人員在判刑程序上擔當積極的角色，協助法庭判處適當刑罰和避免犯上可導致上訴的錯誤。然而，檢控人員不應企圖透過訟辯而在判刑輕重方面影響法庭。檢控人員應做到下列各點：

- (a) 充分（全面而準確地）提出相關事實；
- (b) 協助法庭避免在事實或法律上出錯的情況下繼續審訊；
- (c) 順應法庭索取相關資料的要求提供協助；
- (d) 持平地評估並在有需要時驗證相反的論據，糾正辯方陳詞中在法律或事實上的可見錯誤；
- (e) 根據法庭以往的相關裁決及官方統計數字提供資料；
- (f) 在適當情況下就判刑方式作出陳詞，在建議判刑的輕重時，只能提供獲案例支援的判刑範圍。

21.2 在判刑方面，檢控人員不得就律政司對判刑的意向作出申述，也不得作出任何行為，令律政司司長或刑事檢控專員在可能作出的判刑覆核中行使酌情權時受到限制。

訟費

21.3 在有限度的情況下，法庭有酌情權命令被定罪的犯罪者支付訟費，但如該人已認罪，法庭通常不會作出這項命令。

21.4 法庭必須確定，“審訊有跡象顯示控方因被告人進行抗辯的方式而招致不必要或額外開支，或顯示被告人蓄意浪費法庭的時間”（香港特別行政區 訴 *Cheng Tak-wai* [2002] 4 HKC 458 案）。這些跡象包括：

- (a) 被告在整個審訊過程中的行為；
- (b) 控方在審訊開始時所提理據是否有力；
- (c) 被告知悉多少真相，以及是否有抗辯理由；
- (d) 被告顯然蓄意拖延法律程序；
- (e) 被告堅持要控方證明一些無法否認、無關重要或毫無爭議的事實。

21.5 判給訟費並非旨在懲罰被告，而是補償控方的不必要開支。法庭考慮作出命令時，會顧及被告的經濟能力。

21.6 被告如獲判無罪，或針對被告的法律程序被擱置，被告通常有權獲賠償合理招致的訟費。法庭不作出訟費命令的明確理由可包括以下各項：

- (a) 被告的行為自招懷疑；
- (b) 被告的行為令控方評估被告的定罪機會較實際為大；

- (c) 被告是基於技術因素獲判無罪（除非拒絕作出命令會抵觸有利於被告的無罪推定）；
- (d) 被告未能及早和適時就其行為作出妥當有效的解釋，這可能是無法證實的事宜，或只有被告自己才知道的明顯解釋。

21.7 如犯罪者就定罪提出的上訴或上訴許可申請被駁回，尤其因缺乏理據而被駁回，控方可提出訟費申請。

21.8 判給控方的訟費可作為民事債項予以追討。刑事法庭沒有司法管轄權頒令監禁不支付訟費的被告。

其他命令

21.9 檢控人員應適當地考慮向法庭申請其他相關的命令，例如補償或復還令、取消駕駛資格令、取消公司董事資格令、沒收或充公令、刑事破產令或根據案情的任何其他適當命令。

22 上訴和覆核

定罪

22.1 如被告不服定罪而提出上訴，檢控人員的職責是協助法庭公正及適當地審理上訴。檢控人員必須隨時都能迅速尋求上訴法院糾正任何錯誤或不公平情況，而對於原審法庭所作的正確而適當的裁決，也須同樣盡力尋求上訴法院支持。

22.2 如上訴人沒有法律代表，檢控人員應審視案件，以確定是否有尚未確認的上訴理由。

22.3 檢控人員通常力求維持定罪的判決，但當明顯有恰當理據而控方認同上訴時，便應向法庭解釋。在適當的案件中，控方如認同上訴，必須獲得刑事檢控專員的同意。

22.4 如判罪在上訴後被撤銷，必須考慮是否需要重審的問題。這方面的評估可以受下述因素影響：

- (a) 上訴得直的依據；
- (b) 罪行的嚴重程度；
- (c) 針對被告的案情理據是否有力，包括證人可否出庭作供；
- (d) 犯案至重審之間的相隔時間；
- (e) 上訴人的已服刑期；
- (f) 任何受害者及執法機關的意見。

22.5 只在特殊情況下才應進行第三次或第三次之後的審訊。

判刑

22.6 如上訴人針對判刑提出上訴，檢控人員須協助法庭，向法庭指出所涉罪行在量刑方面的有關法律和相關案例。一些已訂明量刑指引或量刑準則的案例，與一些罪行相類但各自案情有別的案例，前者更有幫助。如有需要，也應提供官方的量刑統計數字。檢控人員應向法庭陳述可能影響上訴裁決的相關量刑原則。

22.7 檢控人員如認為上訴所針對的判刑欠缺法律依據、原則上犯錯或明顯過重，在適當案件中，應在刑事檢控專員同意下作出認同。

覆核判刑

22.8 在特殊情況下，律政司司長可基於判刑在法律上或原則上出錯，或判刑明顯過輕或過重，向法庭申請覆核判刑。

22.9 檢控人員必須：

- (a) 說明有關錯誤及適用的原則；
- (b) 說明支持該立場的法律依據；
- (c) 陳述正確解決爭議的方法。

22.10 在判刑上訴或覆核判刑階段即使提出新證據，也不可藉此增加刑罰。

案件呈述

22.11 根據《區域法院條例》(第 336 章)第 84 條及《裁判官條例》(第 227 章)第 105 條，律政司司長可以案件呈述的方式，針對原審法官或裁判官的決定，分別向上訴法庭和原訟法庭提出上訴。這類上訴屬特殊情況，只會在無罪的裁定、裁決或命令在法律觀點有錯誤時才提出。

23 公布理由

23.1 律政司力求行事公開、向公眾問責、高度透明，以符合社會公義利益。然而，不能為求人前彰顯公義，而導致公義無法施行。

23.2 在檢控過程中所作出的決定或所提供的法律指引，律政司於可行的情況下，可向在事件中有合法權益的人或其他適合的人，以口頭或書面方式提供理由。合法權益包括：

- (a) 法庭有權知道為何會採取某種行動；
- (b) 罪行受害者有權知道案件的處理方式；
- (c) 政府機構或有適當利害關係的實體有權知道有關方面所提供法律指引的依據；
- (d) 社會及傳媒有權關注公開聆訊的案件是否公開秉行公義。

23.3 控方有義務在適當情況下協助教育公眾如何進行檢控程序。檢控理由通常應以所引用的一般原則表述，而無須交代個別案件的詳情。

23.4 在某些情況下，給予理由可能有違公眾利益或並不適當，這些情況包括：

- (a) 給予理由可能妨礙進行中的調查或損害持正執法；
- (b) 給予理由可能會對罪行受害者、證人、疑犯或被告的權益造成不良影響；
- (c) 給予理由可能會對司法工作造成不良影響（尤其是在決定不提出檢控時，案件備受公眾討論，可能構成公審，導致沒有刑事司法程序保障）；
- (d) 給予理由可能會暴露在保密情況下提供的資料或敏感資料，而暴露這些資料可能會令個別人士有合法合理的憂慮；
- (e) 給予理由可能會違反《個人資料（私隱）條例》（第 486 章）提供的保障；

(f) 給予理由可能會違反法律專業保密權（除非獲豁免）或以公眾利益為理由而豁免披露的原則。

23.5 控方一般無需就進行檢控、提出上訴或要求覆核的決定提供理由，因為有關理由會在法律程序的過程中顯而易見。

24 傳媒

24.1 刑事司法制度能夠有效運作，在於制度整體能為社會普遍接納，而社會能夠持續接納，唯一關鍵在於讓公眾明白刑事司法程序，並掌握刑事案件的持平準確資料。公眾接收的資訊大多源自傳媒，而控方便最能在適當時協助傳媒獲得相關事宜的資料。提供資料必須及時，內容必須準確完整。

24.2 在與傳媒代表通訊時，檢控人員可應要求確認已經公開的事實，包括已在公開聆訊中展示的事宜（除非法庭另有頒令）、已定的將進行事宜（例如審訊日期、審訊前的法律爭辯、個別證人可在何時作證）及案件的一般公開資料。不過，檢控人員並非事必要向傳媒提供資料。

24.3 任何敏感資料必須慎重處理，並應採取措施保障個人私隱免受無理侵擾。

24.4 向傳媒提供資料的指導原則包括：

- (a) 避免損害公平審訊的權益，包括無罪推定；
- (b) 支援司法工作及刑事司法制度公正無私；
- (c) 尊重司法制度公開公正的原則；

- (d) 認同就刑事司法制度及刑事檢控工作向市民發放準確和適時的資料，是符合公眾利益的；
- (e) 禮貌對待和體恤罪行受害者及證人，並尊重他們的尊嚴和私隱。

24.5 一般而言，檢控人員不應與傳媒討論若干事項，例如：

- (a) 檢控人員表達的個人意見（例如但不限於以下意見：法律程序可能達致的結果、司法判決是否正確、證人的誠信、證據是否可以接納、裁決是否正確、判刑是否足夠、會否上訴、法官或陪審團成員）；
- (b) 政策事宜或個別人物；
- (c) 控方就案件準備採取的做法；
- (d) 法律程序中任何並非公開聆訊的部分；
- (e) 受害者、證人或少年犯的個人資料；
- (f) 可能導致認出受保護人士（包括線人）的資料；
- (g) 任何保密資料（包括部門內部通訊和與其他機關進行的討論）；
- (h) 是否有商討答辯、是否可能認罪或其他處置安排；
- (i) 在審訊中被豁除的證據或沒有在法律程序中援引的證據。

24.6 檢控人員可向傳媒提供一些已公開的檔副本，例如公訴書或控罪書、在公開聆訊中已承認的事實陳述，以協助傳媒作出準確的報道。檢控人員不應向傳媒提供或讓傳媒取得任何錄影材料，包括錄影會面、案件重組、示範或身分辨認的錄影帶或錄影碟。

24.7 不應向傳媒提供任何犯罪者、受害者或證人的證人陳述書或醫療檢驗、精神、心理或判決前的報告。

24.8 傳媒如提問下列事項，應轉交律政司內部的適當人員處理：

- (a) 具爭議的案件；
- (b) 特別敏感的案件；
- (c) 上訴案件；
- (d) 覆核刑罰；
- (e) 停止檢控的決定；
- (f) 檢控政策。

24.9 如遇到較難處理的查詢，應徵詢刑事檢控專員的意見。

《關於檢察官作用的準則》

第八屆聯合國預防犯罪和罪犯待遇大會通過
1990年8月27日至9月7日，古巴哈瓦那

鑒於《聯合國憲章》規定，世界各國人民申明決心創造能維護正義的條件並宣告以進行國際合作，不分種族、性別、語言或宗教，促進並鼓勵尊重人權和基本自由作為其宗旨之一，

鑒於《世界人權宣言》莊嚴宣佈了法律面前人人平等的原則、無罪推定的原則和有權得到獨立和不偏不倚的法庭進行公正和公開審訊的原則，

鑒於目前在這些原則的基本設想和實際情況之間依然常常存在着差距，鑒於各國應當按照這些原則的精神去組織和開展司法工作，努力使這些原則完全成為現實，

鑒於檢察官在司法工作中具有決定性作用，有關履行其重要職責的規則應促進其尊重並按照上述原則行事，從而有助於刑事司法公平而合理，並有效地保護公民免受犯罪行為的侵害，

鑒於通過改進檢察官的徵聘方法及其法律和專業培訓，並向他們提供一切必要手段，使他們在打擊犯罪行為，特別是打擊新形式和新規模的犯罪行為方面得以克盡職守，確保檢察官具備履行其職責所必需的專業資歷具有十分重要的意義，

鑒於聯合國大會根據第五屆聯合國預防犯罪和罪犯待遇大會的建議，在其1979年12月17日第34/169號決議中通過《執法人員行為守則》，

鑒於第六屆聯合國預防犯罪和罪犯待遇大會在其第 16 號決議中要求犯罪預防和控制委員會把制定關於法官的獨立及關於法官和檢察官的甄選、專業培訓和地位的指導方針，列為其工作的重點，

鑒於第七屆聯合國預防犯罪和罪犯待遇大會通過了《關於司法機關獨立的基本原則》，隨後又由聯合國大會 1985 年 11 月 29 日第 40/32 號和 1985 年 12 月 13 日第 40/146 號決議予以批准，

鑒於《為罪行和濫用權力行為受害者取得公理的基本原則宣言》建議在國際和國家這兩級採取措施，使犯罪行為的受害者能更好地獲得正義與公平待遇、追復原物、賠償和援助，

鑒於第七屆聯合國預防犯罪大會在其第 7 號決議中要求犯罪預防和控制委員會考慮是否需要制訂有關以下各方面的準則：檢察官的甄選、專業培訓和地位，對他們的職責和行為的要求，使他們對刑事司法制度的順利運作作出更大貢獻和增進他們與警方的合作的手段，他們的酌處權的範圍，以及他們在刑事訴訟程序中的作用，並就此向今後各屆聯合國預防犯罪大會提出報告，

所制定的下列各項準則，其目的在於協助會員國確保和促進檢察官在刑事訴訟程序中發揮有效、不偏不倚和公正無私的作用，各國政府在其國家立法和實踐中應尊重並考慮到這些準則的規定，同時還應使檢察官、法官、律師、行政和立法部門的成員以及一般公眾注意到本準則。本準則制定時考慮的主要是公訴檢察官，但它們同樣可以酌情適用於特別任命的檢察官。

資格、甄選和培訓

1. 獲選擔任檢察官者，均應為受過適當的培訓並具備適當資歷、為人正直而有能力的人。

2. 各國政府應確保：
 - a. 甄選檢察官的標準應包含保障措施，防止基於偏見或成見的任用，不得因種族、膚色、性別、語言、宗教、政治見解或其他見解、種族、社會或族裔出身、財產、本人出身、經濟地位或其他地位而對任何人實行歧視，但對檢察官候選人須是有關國家國民的要求，不應被視為歧視；
 - b. 檢察官應受過適當的教育和培訓，應使其認識到其職務所涉的理想和職業道德，憲法和其他法規中有關保護嫌疑犯和受害者的規定，以及由國家法律和國際法所承認的各項人權和基本自由。

地位和服務條件

3. 檢察官作為司法工作的重要執行者，應在任何時候都保持其職業的榮譽和尊嚴。
4. 各國應確保檢察官得以在沒有任何恐嚇、阻障、侵擾，不正當干預或不合理地承擔民事、刑事或其他責任的情況下履行其專業職責。
5. 如若檢察官及其家屬的安全因履行其檢察職能而受到威脅，有關當局應向他們提供人身安全保護。
6. 檢察官的服務條件、充足的報酬，在適用的情況下其任期、退休金以及退休年齡均應由法律或者頒佈法規或條例加以規定。
7. 如有檢察官晉升制度，則檢察官的晉升應以各種客觀因素，特別是專業資歷、能力、品行和經驗為根據，並按照公平和公正的程序加以決定。

言論和結社的自由

8. 檢察官同其他公民一樣，享有言論、信仰、結社和集會的自由。特別是他們應有權參加公眾對有關法律、司法和促進及保護人權問題的討論，有權參加或成立本地、國家或國際組織和參加其會議，而不應因其合法行動或為一合法組織成員而蒙受職業上的不利。在行使這些權利時，檢察官應始終根據法律以及公認的職業標準和道德行事。
9. 檢察官可自由組織和參加專業協會或代表其利益的其他組織，以促進其專業培訓和保護其地位。

在刑事訴訟中的作用

10. 檢察官的職責應與司法職能嚴格分開。
11. 檢察官應在刑事訴訟、包括提起訴訟，和根據法律授權或當地慣例，在調查犯罪、監督調查的合法性、監督法院判決的執行和作為公眾利益的代表行使其他職能中，發揮積極作用。
12. 檢察官應始終一貫迅速而公平地依法行事，尊重和保護人的尊嚴，以及維護人權，從而有助於確保法定訴訟程序和刑事司法系統的職能順利地運行。
13. 檢察官在履行其職責時應：
 - a. 不偏不倚地履行其職能，並避免任何政治、社會、宗教、種族、文化、性別或任何其他形式的歧視；
 - b. 保證公眾利益，按照客觀標準行事，適當考慮到嫌疑犯和受害者的立場，並注意到一切有關的情況，無論是否對嫌疑犯有利或不利；

- c. 對掌握的情況保守秘密，除非履行職責或司法上的需要有不同的要求；
 - d. 在受害者的個人利益受到影響時應考慮到其觀點和所關心的問題，並確保按照《為罪行和濫用權力行為受害者取得公理的基本原則宣言》，使受害者知悉其權利。
14. 如若一項不偏不倚的調查表明的起訴缺乏根據，檢察官不應提出或繼續檢控，或應竭力阻止訴訟程序。
 15. 檢察官應適當注意公務人員所犯的罪行，特別是對貪污腐化、濫用權力、嚴重侵犯嫌疑犯人權、國際法公認的其他罪行的起訴，和依照法律授權或當地慣例對這種罪行的調查。
 16. 當檢察官根據合理的原因得知或認為其掌握的不利於嫌疑犯的證據是通過嚴重侵犯嫌疑犯人權的非法手段，尤其是通過拷打，殘酷的、非人道的或有辱人格的待遇或處罰或以其他違反人權辦法而取得的，檢察官應拒絕將此類證據用於採用上述手段者之外的任何人，或將此事通知法院，並應採取一切必要的步驟確保將使用上述手段的責任者繩之以法。
 17. 有些國家規定檢察官擁有酌處職能，在這些國家中，法律或已公佈的法規或條例應規定一些準則，增進在檢控過程中作出裁決，包括起訴和免於起訴的裁決的公正和連貫性。

起訴之外的辦法

18. 根據國家法律，檢察官應在充分尊重嫌疑者和受害者的人權的基礎上，適當考慮免於起訴、有條件或無條件地中止訴訟程序或使某些刑事案件從正規的司法系統轉由其他辦法處理。為此目的，各國應充分探討改用非刑事辦法的可能性，目

的不僅是減輕過重的法院負擔，而且也可避免受到審前拘留、起訴和定罪的污名以及避免監禁可能帶來的不利後果。

19. 在檢察官擁有決定應否對少年起訴酌處職能的國家，應對犯罪的性質和嚴重程度、保護社會和少年的品格和出身經歷給予特別考慮。在作這種決定時，檢察官應根據有關少年司法審判法和程序，特別考慮起訴之外的可行辦法。檢察官應盡量在有絕對必要時才對少年採取起訴行動。

與其他政府機構或組織的關係

20. 為了確保起訴公平而有效，檢察官應盡力與警察局、法院、法律界、公共辯護人和政府其他機構進行合作。

紀律處分程序

21. 對檢察官違紀行為的處理應以法律或法律條例為依據。對檢察官涉嫌已超乎專業標準幅度的方式行事的控告，應按照適當的程序迅速而公平地加以處理。檢察官應有權利獲得公正的聆訊。這項決定應經過獨立審查。
22. 針對檢察官的紀律處分程序應保證客觀評價和決定。紀律處分程序均應根據法律規定，職業行為準則和其他已確立的標準及專業道德規範並根據本《準則》加以處理。

遵守準則

23. 檢察官應遵守本準則。他們還應竭盡全力防止和堅決反對任何違反準則的行為。

24. 檢察官如有理由認為業已發生或即將發生違反本準則的行為，應向其上級機關，並視情況，向其他擁有檢查權或糾正權的有關當局或機構報告情況。

《檢控人員專業責任守則和主要職責及權利的聲明》
國際檢察官聯合會於 1999 年 4 月 23 日通過

鑒於國際檢察官聯合會的宗旨已於其憲章第 2.3 條闡明，而該等宗旨包括提倡公正不阿、行之有效、不偏不倚兼具高效率的刑事檢控工作，並促進高水平及具高原則性的刑事司法制度；

鑒於聯合國已於 1990 年在古巴哈瓦那舉行的第八屆有關預防犯罪和罪犯待遇大會的會議上通過《關於檢察官作用的準則》；

鑒於國際社區已於《聯合國世界人權宣言》及其後的國際公約、契約及其他文獻中闡明人人應享的權利與自由；

鑒於公眾有需要對刑事司法制度抱有信心，確信制度公正無私；

鑒於檢控人員在刑事司法制度中擔當重要的角色；

鑒於檢控人員是否參與偵查工作按不同司法管轄區而異，而其參與程度又各有不同；

鑒於行使檢控酌情權是一項重大嚴肅的責任；

又鑒於行使檢控酌情權時應盡量公開透明，以符合人權、避免使受害者再受損害，並以客觀無私的方式進行；

為此，國際檢察官聯合會通過下列聲明，以闡明檢控人員的專業操守和主要職責及權利：

1. 專業操守

1.1 檢控人員須：

- 在任何時候皆維持專業信譽及尊嚴；
- 永遠保持專業水準，依法辦事並符合專業規則及道德操守；
- 在任何時間皆秉持公正廉潔，謹慎從事，以達致最高標準；
- 不斷求知，以掌握法律專業的最新發展；
- 力求言行一致、獨立行事、不偏不倚，並於人前付諸實行；
- 常致力保障被告人接受公平審訊的權利，尤其是要確保對被告人有利的證據是會按法例規定或公平審訊的原則而予展示；
- 永遠致力為公眾利益服務，並維護公眾利益；
- 尊重、維護、並秉持人類尊嚴及人權的普遍概念。

2. 獨立行事

2.1 某些司法管轄區若容許行使檢控酌情權，檢控人員行使該項權力時，應獨立行事而不受政治干預；

2.2 非檢控機關若有權向檢控人員發出一般或特別指示，該等指示應該：

- 公開透明；
- 符合法例賦予的權力；
- 受既定指引規管，以維護檢控獨立的事實及觀感。

2.3 非檢控機關如有權指示提起訴訟或終止依法提起的訴訟，則應以相同方式行使這項權力。

3. 不偏不倚

3.1 檢控人員執行職務時須無私、無懼、不偏不倚，尤其須：

- 不偏不倚地執行職能；
- 不受個人或界別的利益及公眾或媒介的壓力所影響，只着眼於公眾利益；
- 客觀行事；
- 對所有有關的情況都予考慮，無論該等情況對受疑人是有利或不利；
- 根據當地法律或公平審訊的規定，盡力確保所有必須及合理的查詢皆已進行而且結果亦已公布，無論有關查詢及結果是會證實受疑人有罪或無罪；
- 永遠力求真相和協助法庭找出真相，並根據法例和公正不阿的原則，務求在社會、受害者與受疑人之間，秉公行義。

4. 刑事訴訟職責

4.1 檢控人員執行職務時須公正不阿、行事迅速而一致。

4.2 檢控人員在刑事訴訟中須擔當以下積極角色：

- 在援引法例或按實務職責賦予的權力而參與罪案偵查工作時，或向警方或其他偵查人員行使職權時，檢控人員須以客觀、不偏不倚及專業的態度執行職務；

- 在督導罪案偵查工作時，檢控人員應確保偵查人員尊重法律規則及基本人權；
- 檢控人員提供意見時，須竭力維持不偏不倚及客觀的態度；
- 檢控人員在提起刑事訴訟時，只有在案件有充分證據支持，並且有理由相信有關證據是可靠和可採納的，才會進行；如果欠缺這些證據，則不會繼續檢控；
- 在訴訟進行期間，須堅定而公正地就案件執行檢控工作；並且不超出證據所顯示的範圍；
- 檢控人員根據當地法律和慣例就執行法庭的決定行使監管職能或履行其他非檢控職能時，須時刻為公眾利益而行事。

4.3 此外，檢控人員必須：

- 緊守專業保密原則；
- 按照當地法律和公平審訊的規定，在受害者和證人的個人權益受到或可能受到影響時，考慮他們的意見、合法權益和可能擔心的事宜，並且設法確保受害者和證人獲告知其權利；同樣，設法確保任何受屈的一方獲告知，他有權在可能的情況下向更高層主管當局/更高級別法院求助；
- 與法庭和其他有關機關合作，保障被告人的權利；
- 按照法律或公平審訊的規定，在合理情況下盡早向被告人士展示有關不利和有利的資料；
- 檢查擬採用的證據，以確定有關證據是否以合法或合憲的方式取得；

- 如有理由相信證據是以不法方式取得，尤其是構成酷刑或殘酷對待的方式，嚴重侵犯受疑人的人權，則拒絕採用有關證據；
- 設法促使有關方面對使用這些方法的人採取適當行動；
- 按照當地法律和公平審訊的規定，充分考慮免予檢控、有條件或無條件中止法律程序，或在適當情況下，考慮以正式司法體系以外的途徑處理刑事案件，尤其是涉及年輕被告人的案件，而又充分尊重受疑人和受害者的權利。

5. 合作

5.1 為確保檢控工作公平而具成效，檢控人員必須：

- 與警方、法庭、法律界、辯方律師、公設辯護人和其他政府機關合作，不論是國家或國際機關；以及
- 按照法律規定，本著相互合作的精神，協助其他司法管轄區的檢控機關和人員。

6. 賦權

6.1 為確保檢控人員能夠按這些標準獨立履行專業職責，檢控人員應該受到保障，免受政府任意行為侵擾。一般而言，檢控人員應該有權：

- 履行其專業職能，不受恐嚇、阻礙、侵擾及不當干預，亦不用無理地承擔民事責任、承受處罰或其他法律責任；
- 當檢控人員恰當履行檢控職能而令其本人及家屬的個人安全受到威脅時，則其本人連同家屬須受到當局人身保護；

- 享有與其主要職責相稱的合理服務條件及充足薪酬，薪金或其他福利不得任意被削減；
- 享有合理和規定的職位保障和退休金，並且在指定年齡退休，惟須符合個別情況的就業或選擇條件；
- 獲招聘和晉升，所依據的是客觀因素，特別是專業資歷、能力、品格、工作表現和經驗等因素，而有關決定乃按照公正和公平的程序作出；
- 如有關作為被投訴超出恰當專業準則的範圍，以致需要採取紀律措施，則有權根據法律或法規迅速獲得公正聆訊；
- 在紀律聆訊中獲得客觀的評估和決定；
- 成立和參加專業組織或其他組織以保護權益、加強專業培訓，並且保障成員的地位；以及
- 獲寬免不須遵守不法命令或有違專業準則或道德操守的命令。

Prosecution Code

2013

Department of Justice
Hong Kong Special Administrative Region

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Introduction

The *Prosecution Code* is a set of statements and instructions to guide prosecutors in conducting prosecutions. It also aims to give others a clearer understanding of the approach prosecutors take, and the considerations they employ, in handling prosecutions. It should be treated as a set of guidelines and always used subject to the issues and circumstances of the particular matter or case. The golden thread that runs through the fabric of the *Prosecution Code* is the importance of upholding the just rule of law by the just application of just laws.

The public good is a principal consideration in the conduct of prosecutions. The community has a vested interest in the proper conduct of its prosecutions and in furthering the criminal justice imperative that the guilty are convicted and the innocent are acquitted. On behalf of the community, prosecutors take on a heavy responsibility to ensure that justice is dispensed with equal measure and in an even handed manner at all times. A prosecutor is expected to discharge his or her duties with professionalism, skill and integrity, and to operate within the framework of defined and clear prosecution policy guidelines.

The decision whether or not to prosecute an individual or entity is always a crucial one. It should only be taken after a prosecutor has fully evaluated the evidence and circumstances, and answered two questions in particular. First, is the evidence sufficient to justify instituting or continuing proceedings? Second, if it is, does the public interest require a prosecution to be pursued? The prosecutor must at all times act in the public interest and be guided or directed by public interest considerations in the measured

and just application of the rule of law. In deciding where the public interest lies in a particular case, the prosecutor must consider the justice of the situation and examine all the factors. It will vary from case to case but, in general, the more serious the offence, the more likely it is that the public interest will require a prosecution to proceed.

The purpose of the *Prosecution Code* is not only to provide a code of conduct for prosecutors and to promote fair, just and consistent decision-making at all stages of the prosecution process but also to make the community aware of how the public prosecutions system operates. Openness and accountability, together with principled professionalism and independence, are the key objectives of a prosecutor in the pursuit of justice.

The Department of Justice is committed to open justice. It seeks to provide the community with a prosecution service which is fair and transparent. The public are entitled to know that principled criteria guide prosecutors throughout the course of criminal proceedings, and to see for themselves what these are.

The responsibility of prosecutors is to apply the highest of standards in their handling of criminal cases. In their dealings with others, prosecutors need to be frank and honest. They should also be considerate and sensitive when they deal with victims of crime and witnesses. Persons charged with offences are entitled to be treated fairly and with respect, and prosecutors must be scrupulous to protect the interests of anyone suspected or accused of crime. A fair trial requires a fair prosecutor.

The *Prosecution Code* seeks to:

- (a) promote consistency in prosecution practice, eliminating unwarranted disparity between cases;
- (b) promote regularity, without regimentation;
- (c) facilitate the exercise of discretion in a flexible and principled manner;
- (d) ensure the fair and effective exercise of prosecutorial responsibility;
- (e) promote confidence in the community and with accused persons that decisions will be made rationally and objectively on the merits of each case;
- (f) provide reference points and guidance for prosecutors;
- (g) assist in training prosecutors;
- (h) ensure the accountability of prosecution decision making;
- (i) enhance understanding between agencies and therefore better coordination;
- (j) inform the public of the processes and standards being applied;
- (k) demonstrate internationally the standards and principles applied in Hong Kong.

In 1990, the *Guidelines on the Role of Prosecutors* were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. They provide guidance to prosecutors in Hong Kong. The Guidelines appear at Appendix I.

The *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* were adopted

by the International Association of Prosecutors in 1999. The *Standards* were adopted in 2008 as a Resolution by the 17th United Nations Commission on Crime Prevention and Justice, and they provide guidance to prosecutors in Hong Kong. The *Standards* appear at Appendix II.

1 Independence of the Prosecutor

Independence Generally

1.1 A prosecutor is required to act in the general public interest, but independently as a “minister of justice”. In making decisions and exercising discretion a prosecutor must act fairly and dispassionately on the basis of the law, the facts provable by the admissible evidence, other relevant information known to the prosecution and any applicable policy or guidelines.

1.2 A prosecutor must not be influenced by:

- (a) any investigatory, political, media, community or individual interest or representation;
- (b) the personal feelings or beliefs of the prosecutor concerning the offence, the suspect, the accused or a victim of crime;
- (c) the possible effect of the decision on the personal or professional circumstances of those who have the conduct of the case;
- (d) the possible political effect on the government, any political party, any group or individual;
- (e) possible media or public reaction to the decision;

- (f) the race, religion, sex, ethnic or national origin, colour, language, political or other opinion, social origin, social or political affiliation, official or other position in the community, lawful activities, beliefs, property, health, disability or any other personal characteristics of the suspect or accused or any other person involved or concerned (although such considerations may need to be addressed for other reasons).

Department of Justice

1.3 Article 63 of the *Basic Law* of the Hong Kong Special Administrative Region provides that the Department of Justice “*shall control criminal prosecutions, free from any interference*”. That constitutional guarantee of independence ensures that prosecutors within the Department may act independently without political or other improper or undue influence.

Secretary for Justice

1.4 The Secretary for Justice is head of the Department of Justice. The Court of Appeal stated in *In Re C (A Bankrupt)* [2006] 4 HKC 582 at 590:

“The prosecutorial independence of the Secretary for Justice is a linchpin of the rule of law... ‘the decision whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter for the prosecuting authorities to decide on the merits of the case without political or other pressure.’ [Sir Robert Finlay, 1903] ...these statements...reflect accepted and applied fundamental principle in this

jurisdiction the continuation of which is preserved by the entire theme of the Basic Law as well, specifically, as by article 63."

1.5 The Secretary for Justice is responsible for applying the criminal law, formulating prosecution policy, and superintending the Director of Public Prosecutions and prosecutors in the Prosecutions Division of the Department. The Secretary is accountable for decisions made by prosecutors, to whom various powers are delegated.

2 Director of Public Prosecutions

2.1 The Director of Public Prosecutions is head of the Prosecutions Division of the Department of Justice and responsible for the conduct of the Prosecutions Division.

2.2 The Director initiates and conducts the prosecution of cases on behalf of the Hong Kong Special Administrative Region. The Director is responsible to the Secretary for Justice for:

- (a) directing public prosecutions;
- (b) advising the Secretary on criminal law related matters, except in specific matters in which the Secretary has authorised the Director to determine the matter on his or her own;
- (c) advising law enforcement agencies in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution;
- (d) developing and promoting prosecution policy;

- (e) advising the government on the development, enforcement and implementation of the criminal law.

3 Role and Duties of the Prosecutor

Role and Functions

3.1 A prosecutor is required to comply with and promote the rule of law. A prosecutor acts on behalf of the community in an impartial manner and as a "minister of justice". To this end, a prosecutor must fairly and objectively assist the court to arrive at the truth and to do justice between the community and the accused according to law.

3.2 In the Supreme Court of Canada, Rand J. stated in *Boucher v The Queen* [1955] SCR 16 at 23-24:

"It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

3.3 A prosecutor works in an adversarial and accusatorial litigation system. The prosecutor's advocacy role must be conducted temperately and with restraint; nevertheless, a prosecutor is entitled to advocate firmly and courteously the prosecution's position on an issue and to test and, if necessary, attack the position adopted or evidence advanced on behalf of an accused.

3.4 Prosecutors carry out their roles as an integral part of a criminal justice process that includes investigation, prosecution, defence, adjudication and punishment. Their contribution to the criminal justice process and the outcomes achieved must be made professionally and to the highest standards reasonably achievable. Prosecutors should not seek to step beyond the proper roles of the prosecution in the criminal justice process.

3.5 In litigation, a prosecutor must fairly:

- (a) seek to have relevant and credible evidence placed fully and intelligibly before the court;
- (b) assist the court with accurate and complete submissions of law, to enable the law properly to be applied to the facts;
- (c) refrain from using language or conduct that may inflame or bias the court against the accused and defence witnesses or seek to ridicule the accused or the defence case by sarcasm or otherwise;
- (d) refrain from expressing any personal opinion, especially as to the credibility of evidence or the guilt of the accused;
- (e) invite the court to stop the proceedings if it becomes reasonably apparent to the prosecutor that there is no longer a reasonable prospect of conviction.

3.6 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to carry weight and to be capable of reasonably contributing to a decision of the court. Material put to a witness (including an accused) must be considered on reasonable grounds to be accurate and reliable and its use justified in the circumstances.

3.7 A prosecutor must not lead the court or defence to believe that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be produced from material already available to the prosecutor.

3.8 A prosecutor must at all times assist the court to avoid appealable error and must strive to correct any error of law or fact that becomes apparent in the course of the trial and sentence proceedings.

Fairness

3.9 A prosecutor should prepare and assemble all relevant evidence available to the prosecution well in advance of trial. The prosecution should, as a general rule, offer all its evidence during the presentation of its case. It should inform the court and defence of authorities, warnings and directions that may be appropriate, even if unfavourable to the prosecution case.

3.10 The prosecution must identify any relevant material available to him or her that may not be admissible evidence (including on the ground that it appears to have been obtained illegally or improperly). The prosecution may decline to adduce such material and, as part of its disclosure

obligations, inform the defence of such unused material. If the prosecution decides to lead such material as evidence, it must inform the defence. If the defence objects to its admission, the admissibility of such evidence may be determined by the court.

3.11 A prosecutor also owes a duty of fairness to the community, through carrying out the responsibilities of prosecuting in as effective and efficient a fashion as is reasonably possible.

Human Rights

3.12 A prosecutor, in carrying out his or her role, is in a position to affect substantially the human rights of suspects, accused, victims, witnesses and other members of the public. A prosecutor has an obligation to be aware of those rights, as well as their sources, and to respect or give effect to them as appropriate in the course of criminal proceedings.

3.13 The *Basic Law* ("BL") and the *Hong Kong Bill of Rights Ordinance* ("BOR"), Cap. 383 provide the fundamental rights of Hong Kong residents and others, many of which may arise for consideration in the conduct of criminal proceedings. Prosecutors must understand the impact of these instruments on their work and adhere to their requirements at all times.

3.14 BL Article 8 preserves the laws previously in force, including the common law. BL Article 39 provides that the provisions of the International Covenant on Civil and Political Rights ("ICCPR") as applied to Hong Kong shall remain in force and shall be implemented through the laws of Hong Kong. The BOR is the main instrument for implementing the ICCPR as applied to Hong Kong.

3.15 The prosecutor must be alert to the rights of an accused which are relevant to the prosecution process, including equality before the law, the rights to have confidential legal advice, to be presumed innocent, and to have a fair trial without undue delay under BL Articles 25, 35 and 87 (BOR Articles 10 and 11).

3.16 In determining whether to prosecute a case or to continue a prosecution, account should be taken of the rights of an accused, and other parties to the proceedings. The prosecutor should be aware that the Basic Law recognizes freedom of speech (Article 27; BOR Article 16(2)); inviolability of the freedom of the person (Article 28; BOR Article 5); inviolability of the home (Article 29; BOR Article 14); freedom and privacy of communication (Article 30; BOR Article 14); freedom of movement (Article 31; BOR Article 8); freedom of conscience and religion (Article 32; BOR Article 15).

4 Investigation and Prosecution

4.1 Investigators gather the evidence and other material on which prosecutors rely. In no sense are investigators "clients" of prosecutors, nor do they give "instructions" to prosecutors. It is expected, however, that there will be ongoing consultations between prosecutors and investigators in respect of cases and each should take into account the views expressed by the other.

4.2 While the functions of investigation and prosecution are separate and distinct and are carried out by specialists with different sets of skills and resources, the close cooperative relationship between investigators and prosecutors should continue to be encouraged and promoted.

Assistance by and Advice to Investigators

4.3 Prosecutors may request that further investigations be conducted, but cannot take charge of or direct investigations. Investigators may receive advice from prosecutors in respect of the law, charges and evidence, including:

- (a) charges that may be available and appropriate;
- (b) the sufficiency of evidence to proceed;
- (c) the admissibility of evidence;
- (d) the present state of the relevant law;
- (e) the appropriate venue for trial;
- (f) the disclosure of material;
- (g) the institution of appeals or reviews.

5 Decision to Prosecute

5.1 Section 15(1) of the *Criminal Procedure Ordinance*, Cap. 221 states:

"The Secretary for Justice shall not be bound to prosecute an accused person in any case in which he may be of opinion that the interests of public justice do not require his interference."

5.2 That provision applies such discretion equally to the Director of Public Prosecutions and to prosecutors acting on behalf of the Secretary for Justice pursuant to delegations.

5.3 The effect of that provision is to endorse generally accepted and longstanding international practice under the

common law – that the decision to prosecute includes two required components. The first is that the admissible evidence available is sufficient to justify instituting or continuing proceedings. The second is that the general public interest must require that the prosecution be conducted.

Sufficiency of Evidence

5.4 There must be legally sufficient evidence to support a prosecution; that is, evidence that is admissible and reliable and, together with any reasonable inferences able to be drawn from it, likely to prove the offence.

5.5 The test is whether the evidence demonstrates a reasonable prospect of conviction. To satisfy that test, a prosecutor must make prospective judgements about matters such as:

- (a) the evidence available;
- (b) any challenge that may be made to the admissibility and/or reliability of the evidence;
- (c) the availability, competence and credibility of witnesses, and their likely assessment by the court;
- (d) any contrary evidence that may reasonably be anticipated;
- (e) likely defences to be raised;
- (f) the way in which a reasonable tribunal of fact, properly instructed as to the law, will be likely to act on all of the evidence and arguments in the case.

5.6 A prosecutor will need to consider in relation to witnesses: the reliability of memory; any suggestion of exaggeration; any association with the accused (favourable

or unfavourable); any motive not to tell the whole truth; availability; psychological or other personal characteristics (including in the case of a child or incapacitated witness); vulnerability to attack by the defence.

5.7 The public interest is not served by proceeding with cases that do not satisfy this test. The resources required to prosecute must be responsibly applied only to proceedings that will be fair and that are likely to be effective.

Public Interest

5.8 Even where the first component of the prosecution test is satisfied, a prosecutor must consider the second component, the requirements of the public interest.

5.9 There can be no exhaustive list of the considerations to be addressed when making this assessment, but they include:

- (a) the nature and circumstances of the offence, including any aggravating or extenuating circumstances;
- (b) the seriousness of the offence: more serious offences, including those where a victim has suffered significant harm or loss, or where there have been multiple victims, are more likely to be prosecuted in the public interest;
- (c) the effect of a prosecution on Hong Kong law enforcement priorities;
- (d) any delay in proceeding with a prosecution and its causes;
- (e) whether or not the offence is trivial, technical in nature, obsolete or obscure;
- (f) the level of the suspect's culpability;

- (g) the involvement of other suspects in the commission of the offence;
- (h) any cooperation from the suspect with law enforcement or demonstrated remorse: the public interest may be served by not prosecuting a suspect who has made admissions, demonstrated remorse, compensated a victim and/or cooperated with authorities in the prosecution of others;
- (i) any criminal history of the suspect;
- (j) the attitude, age, nature or physical or psychological condition of the suspect, a witness and/or a victim;
- (k) the likely final disposition of the case;
- (l) the prevalence of the offence and any deterrent effect of a prosecution;
- (m) special circumstances that would affect the fairness of any proceedings;
- (n) the availability and efficacy of alternatives to prosecution, such as a caution, warning or other acceptable form of diversion.

Mental Health Issues

5.10 The criminal justice system operates to protect both the community and individual members of it. From time to time the prosecution may consider it appropriate to charge mentally ill persons with applicable offences principally in order to invoke the court's jurisdiction to make beneficial orders for the management of the mentally ill, their protection and the protection of the community.

6 Consent to Prosecute

6.1 The Secretary for Justice must give his or her consent before certain kinds of prosecutions can be undertaken. This is a safeguard to ensure that an appropriate level of scrutiny is exercised in particular cases. Accordingly, a prosecutor should consider if consent is required by law. The power to consent has been delegated to the Director of Public Prosecutions and senior prosecutors in some cases.

7 Private Prosecution

7.1 Under the common law a person has the right to commence a criminal prosecution in the public interest.

7.2 Section 14 of the *Magistrates Ordinance, Cap. 227* enables a complainant or informant to conduct a prosecution either in person or by counsel.

7.3 The Secretary for Justice is entitled to intervene in a private prosecution and to assume its conduct, becoming a party to the proceedings at that time and displacing the original prosecutor. The Secretary for Justice may continue proceedings privately begun or may prevent them from continuing by declining to sign the charge sheet or indictment (see sections 74 and 75 of the *District Court Ordinance, Cap. 336* and section 17 of the *Criminal Procedure Ordinance, Cap. 221*). A decision on the future course of the prosecution will be made in accordance with the *Prosecution Code* before a decision is made whether or not to intervene.

7.4 When considering whether or not to take over a private prosecution, the following factors should be included among those taken into account:

- (a) the interests of public justice;
- (b) the seriousness of the offence;
- (c) the views of any interested party;
- (d) any duplication of proceedings;
- (e) consistency with decisions of the Department of Justice;
- (f) the prospects of a fair trial.

The Secretary for Justice may also take into account the conduct of the original prosecutor.

8 Charging Practice and Procedure

Settling Charges

8.1 When choosing charges to be prosecuted, the prosecution should attempt to reflect adequately the criminality of the conduct alleged, in a manner that is both efficient and that will enable the court to do justice between the community and the accused. The number of charges should be kept as low as reasonably possible. Where a large number of offences of a similar nature is alleged, the use of representative charges should be considered. If the accused agrees, outstanding additional charges may be taken into account on sentencing.

Venue for Trial

8.2 Some offences must be tried in the Magistrates' Court, some must be tried on indictment in the District Court or the Court of First Instance and some may be tried either way. Purely summary offences may be tried with indictable offences, but not in the Court of First Instance.

8.3 Article 86 of the Basic Law provides: *"The principle of trial by jury previously practised in Hong Kong shall be maintained."*

8.4 When deciding the venue for trial, a prosecutor should have regard to:

- (a) the maximum penalties available for offences dealt with in the Magistrates' Court (2 years' imprisonment in most cases), the District Court (7 years' imprisonment) and the Court of First Instance (the prescribed maximum penalty);
- (b) the general circumstances of the case;
- (c) the gravity of the allegations;
- (d) issues likely to be in dispute;
- (e) the public importance of the proceedings;
- (f) whether or not the accused held a position of high public status, responsibility or trust;
- (g) whether or not issues arise for determination that require the application of community standards and/or values;
- (h) any aggravating and mitigating factors;
- (i) the accused's antecedents.

After considering the above, the prosecutor should select an available venue for trial that will enable the relevant court to deal most appropriately with the matter and impose an adequate sentence to address the criminality involved in the conduct. A prosecutor should take into account the possibility of an enhanced sentence for an organized crime offence.

9 Proceeds of Crime

9.1 Restraint and confiscation orders are available under the *Organized and Serious Crimes Ordinance*, Cap. 455 and the *Drug Trafficking (Recovery of Proceeds) Ordinance*, Cap. 405.

9.2 Restraint and confiscation orders against the proceeds of criminal offending are not intended additionally to punish an offender. They are intended to prevent an offender from benefitting from the offending. Consequently, they should not be regarded as optional additions to the conduct of a prosecution or to sentence, but considered proactively in all cases on their merits. These orders are meant to serve the important public policy that no one should be allowed to benefit from the proceeds or instruments of serious crime.

9.3 From the outset of proceedings, the prosecution must consider appropriate orders in respect of property, whether used in the commission of crime or regarded as the proceeds of offending. Application for a restraint order will normally be made at the outset of criminal proceedings in order to ensure that property will not be dissipated and be available to satisfy any confiscation order made after conviction.

10 Review and Discontinuation

10.1 A prosecutor remains under a duty continually to review a prosecution that has been commenced. The prosecution must be discontinued if, following a change of circumstances, a reapplication of the prosecution test at any stage indicates that the evidence is no longer sufficient to

justify a reasonable prospect of conviction or the interests of public justice no longer require the prosecution to proceed.

10.2 If a decision has been taken not to prosecute in a particular instance or to discontinue a prosecution, that decision will be reversed only in justifiable circumstances which may include:

- (a) cases in which some error or oversight has resulted in a decision which, on review, is seen to have been clearly wrong;
- (b) cases where unanticipated significant evidence becomes available at a later time;
- (c) cases that are temporarily discontinued while evidence continues to be gathered (where the accused will have been warned of the possible reversal);
- (d) cases in which the discontinuance was obtained by fraud, dishonesty, or impropriety.

Judicial Review

10.3 An independently made prosecution decision of the Secretary for Justice or his or her delegate, or decisions made during criminal proceedings may be judicially reviewed only in rare and exceptional cases. This is also the case with decisions made at trial in order to avoid the fragmentation of the criminal trial process. An order of review can do no more than require the Secretary for Justice to reconsider the decision in the light of the court's findings.

Nolle Prosequi

10.4 Proceedings on indictment in the Court of First Instance, by charge in the District Court and for an indictable

offence in the Magistrates' Court may be stayed by the entry of a *nolle prosequi* but only on the direction of the Secretary for Justice.

10.5 A *nolle prosequi* does no more than stay the prosecution which may be recommenced if the interests of public justice so require. It is an exceptional procedure, to be exercised in cases such as where an accused suffers from a cognitive or physical incapacity that is likely to be permanent, or where it would prevent the interests of public justice being thwarted (for example, where interference with a witness cannot be adequately addressed by an adjournment).

Bind Over Orders

10.6 A person having admitted his or her wrongdoing without a conviction being secured against him or her may be bound over to keep the peace and/or be of good behaviour in relation to specific conditions. The court must find facts from which it could properly be inferred that there is a danger of the person committing a breach of the peace in the future. Notice of the course proposed must be given to the person. Failure to enter a recognizance or breach of its terms may result in contempt proceedings against the person.

10.7 Such a procedure is particularly appropriate in cases of first-time offenders and minor offences. An offender admits his or her wrongdoing and is admonished in open court, and then gives an undertaking to the court to be of good behaviour for up to 2 years with the added sanction that may be imposed of up to 6 months' imprisonment for breaching the undertaking (see section 61 of the *Magistrates Ordinance*, Cap. 227). Such a procedure serves the ends of preventative justice and rehabilitation of the offender. A

decision to agree to such a procedure on specific conditions requires consideration of:

- (a) whether the public interest requires the prosecution to proceed;
- (b) whether the consequences to the offender would be out of all proportion to the gravity of the offence;
- (c) the likely penalty in the event of conviction;
- (d) the age of the offender, his or her record, character, mental state (at the time of offending and presently);
- (e) the views of the victim;
- (f) the attitude of the offender to the offence.

11 Immunity from Prosecution

11.1 In principle it is desirable that the criminal justice process should operate without the need to immunise witnesses to testify to the involvement of others in criminal offending, but it is recognized that in some cases that is an appropriate course. As a general rule, an accomplice should be prosecuted, irrespective of whether or not he or she is to be called as a witness. The preferable course is for a cooperating accomplice to be dealt with after the trial, and ordinarily he or she will receive a discount on sentence to reflect the nature and extent of his or her cooperation.

11.2 In some areas of law enforcement a successful prosecution will be dependent on or greatly assisted by the evidence of an informer. An informer should be used as a prosecution witness only if the interests of justice demand it. That requires a balance to be struck between the interest of

the community in securing the conviction of an offender and the awarding of a benefit to a person who may be closely associated with the offending and perhaps criminally involved in it. Ordinarily the evidence to be given by the informer should be considered necessary to secure the conviction of others and not be available elsewhere.

11.3 In certain exceptional circumstances a witness may be granted immunity from prosecution. The decision to grant an immunity and the balancing process involved will be strongly influenced by:

- (a) the nature of the evidence the witness may be able to give and its significance to the prosecution of the case;
- (b) the antecedents of the witness;
- (c) his or her perceived credibility (including the fullness of his or her disclosure of facts and matters within his or her knowledge) and any discernible motive for not telling the whole truth (including the receipt, promise or expectation of a benefit);
- (d) his or her level of involvement in the offence being prosecuted (which should generally be lower than that of the offender being prosecuted);
- (e) the presence of any supporting evidence.

11.4 It is a requirement that a grant of an immunity is made at the directorate level. An immunity should be given to the witness in writing and copies made available to the defence before trial and the court at trial.

12 Duty of Disclosure

12.1 Article 87 of the *Basic Law* gives to any accused the right to a fair trial. One of the guarantees of fairness is the full and timely disclosure to the defence of all relevant or possibly relevant material (or material information – and not confined to admissible evidence) available or known to the prosecution, whether it assists in the proof of the prosecution case or, on a sensible appraisal by the prosecution, may reasonably be regarded as:

- (a) being relevant or possibly relevant to an issue in the case;
- (b) raising or possibly raising a new issue whose existence is not apparent from the evidence that the prosecution proposes to use; or
- (c) holding out a real (as opposed to fanciful) prospect of providing a lead to evidence which goes to (a) or (b).

12.2 The duty to disclose is a positive and continuing duty on the prosecution that begins pre-trial and carries through to the end of the criminal process before the courts.

12.3 Material to be disclosed by the prosecution includes:

- (a) all evidence sought to be relied upon by the prosecution (witness statements, certificates, documentary exhibits, electronic recordings, photographs and/or reasonable access to physical evidence);
- (b) the previous convictions of an accused, of a complainant, of a prosecution witness or of a deceased victim;

- (c) known discreditable conduct of a prosecution witness (including disciplinary records) that may reasonably affect his or her credibility where that is likely to be a significant issue in the case;
- (d) material (including witness statements) known to the prosecution that may assist the defence in the proceedings.

12.4 If relevant disclosable material known to the prosecution is in the possession of a governmental agency or public body, the prosecution should take such steps as are reasonable in the circumstances to obtain it, identify it to the defence and advise of its location if it cannot be obtained.

12.5 Public interest immunity may apply to some such material, where disclosure may harm the general public interest (such as the identity of an informer or undercover officer, information given confidentially to investigators, information that may harm the operations of government including continuing investigations). In those circumstances a balance must be struck between, on the one hand, fairness to the accused and, on the other hand, the protection of the public interest. Occasionally the court should be invited to rule on such issues.

12.6 Material may be covered by legal professional privilege, such as confidential legal advice by a prosecutor to an investigator, and is generally not to be disclosed. Internal records and materials generated by the prosecution in the preparation of the case may not be disclosable.

12.7 The prosecution is not under an obligation to disclose to the defence material that is relevant only to the credibility of a defence witness or of the accused.

12.8 Guidance may also be found in *HKSAR v Lee Ming-tee and Securities and Futures Commission* (2003) 6 HKCFAR 336, *R v Keane* (1994) 99 Cr App R 1 and *HKSAR v Lau Ngai-chu* [2002] 2 HKC 591.

13 Plea Negotiation and Agreement

13.1 The prosecution may be invited by the defence to resolve a matter by agreeing to the accused pleading guilty to fewer or lesser charges than those already laid. In rare circumstances, the prosecution may itself put this suggestion to the defence. In these circumstances three tests must be satisfied:

- (a) there is admissible evidence available to prove the charges to which pleas have been offered;
- (b) the charges adequately reflect the criminality of the conduct alleged against the accused;
- (c) the charges give to the court adequate scope to impose penalties appropriate to address that criminality.

13.2 Ordinarily, plea negotiations should be accompanied by agreement between the prosecution and defence on the statement of facts to be presented to the court as the basis for sentencing. Such statement should not distort the provable facts or provide an artificial basis for sentencing. In some cases some facts may not be able to be agreed and may need to be litigated in what is commonly known as a "Newton inquiry" where evidence is called to enable the court to resolve disputed issues for the purposes of sentencing.

13.3 Considerable time and expense can be saved by accepting pleas to appropriate charges. Victims and witnesses can be spared the stress and inconvenience of testifying. The criminal justice process operates more efficiently with such a resolution, without compromising its effectiveness and public support.

13.4 Negotiated pleas must not be accepted if the accused maintains his or her innocence of the charges.

13.5 In all cases where negotiations are under way, the prosecutor should consult where appropriate with the investigator in charge of the case and any victim of crime, so as to inform them of the action being contemplated and of the reasons for it. The prosecutor must receive their views and take them reasonably into account when decisions are being made – not by way of instructions but as another means of informing such decisions.

14 Victims of Crime and Vulnerable Witnesses

14.1 Prosecutors should have regard to *Guidelines on the Treatment of Victims and Witnesses* of the Prosecutions Division and *The Victims of Crime Charter, 2007*.

14.2 Victims of crime and vulnerable witnesses (because of age or psychological or physical condition) have special interests in the proceedings and special needs, which may affect their ability to give effective evidence if left unattended.

14.3 There is a public interest in facilitating the reporting of crime and in its effective prosecution. This may be promoted by treating such persons with respect and

understanding and supporting them through the criminal justice process.

14.4 Victims are entitled to have their role in the proceedings fully explained and to be consulted during the course of proceedings about actions being taken and their effect on their rights. All attempts should be made to minimise the distress inherent in reliving and telling of traumatic personal events in interviews and in court.

14.5 Victims of crime have the rights to:

- (a) be treated with courtesy and respect;
- (b) be kept informed of the progress of the case;
- (c) have their views considered by prosecutors and investigators;
- (d) be provided with proper facilities at court;
- (e) have their circumstances and views brought to the attention of the court where appropriate;
- (f) be given respect for privacy and confidentiality.

14.6 A victim impact statement may need to be presented and updated medical reports may need to be obtained and tendered at first instance and on appeal.

14.7 Vulnerable witnesses who may or may not be victims of crime should be treated with similar respect for their rights, expectations and personal circumstances. They include children, persons with mental disabilities and witnesses in fear. It may be appropriate for protection to be provided to vulnerable witnesses or victims of crime by way of:

- (a) giving evidence by live television link;
- (b) playing electronically pre-recorded video evidence;
- (c) a screen;
- (d) a closed hearing;
- (e) an expedited hearing;
- (f) a continuous hearing;
- (g) support persons;
- (h) informality in court conduct;
- (i) special security measures.

14.8 In cases where it is appropriate for the court to award compensation and/or restitution for harm or loss, the prosecutor should ensure that the court is fully and appropriately informed of all relevant circumstances.

15 Juvenile Offenders

15.1 It is a longstanding legal requirement that in prosecuting juveniles the court must give priority to their welfare. Special procedural provisions apply to persons under the age of 16 years and, so far as possible, the hearing of such cases should be expedited and prosecuted in the Juvenile Court.

15.2 Consequently, the prosecution often prefers to deal with allegations against juveniles by alternative methods to criminal prosecution, unless the seriousness of the offence or other circumstances require a prosecution in the public interest.

15.3 It would be an abuse of process to prosecute a juvenile solely for the purpose of securing access to the welfare powers of the court. If there appear to be grounds for care proceedings and that course may better serve the general public interest, the prosecutor should invite investigators to consider appropriate referral.

15.4 In deciding if the public interest warrants the prosecution of a juvenile, emphasis should be placed on the following considerations:

- (a) the seriousness of the alleged offence;
- (b) the juvenile's antecedents;
- (c) the age, capacity and apparent mental and physical maturity of the juvenile;
- (d) the support of family and others available to the juvenile;
- (e) the schooling or employment arrangements in place at the time;
- (f) the sentencing options available to the court;
- (g) the availability and efficacy of alternatives to prosecution, such as cautioning.

16 Unrepresented Accused

16.1 Care must be exercised by a prosecutor dealing with an unrepresented accused. This may involve striking a balance between inconsistent imperatives. The duty of fairness requires a prosecutor to ensure that the accused is appropriately informed of the prosecution case and the course it will take. The court has an overriding duty to ensure

that the proceedings are fairly conducted, and the prosecutor should assist the court to do so by acting and responding appropriately during the course of the proceedings. While a prosecutor is not obliged to provide advice of any sort to an unrepresented accused, it is in the interests of justice to ensure that an unrepresented accused seeks or applies for legal representation or assistance.

16.2 In communications with an unrepresented accused a prosecutor should maintain a degree of detachment. Written communication is preferable and communication may be made through the agency of the court. Telephone communications should be avoided by prosecutors and where required should be made by law enforcement officers. Personal contacts should be in the presence of a reliable person who should compile a note in writing of any communications made.

16.3 Plea negotiations with an unrepresented accused should not be initiated by the prosecution and should be conducted with care, and where possible, in the presence of a reliable person and appropriately recorded.

17 Domestic Violence Cases

17.1 Prosecutors should have regard to *Guidelines for Prosecuting Domestic Violence Cases* of the Prosecutions Division.

17.2 In prosecuting domestic violence cases, the prosecution must consider the safety of the victim, any children and other persons involved, the situation of the family and the likely effect of any prosecution on its members.

17.3 Domestic violence may become more frequent and serious the longer it continues. Accordingly, a prosecution may be required, according to the standard criteria, even if a victim does not wish it to proceed. In making such decisions the prosecution is obliged to take into account the security of the persons at risk and the public interest.

17.4 The prosecution should take into account, when deciding on the course to be taken:

- (a) the objective seriousness of the alleged offending behaviour, including any use of a weapon, and the use of alcohol or drugs;
- (b) the victim's injuries (physical and/or psychological);
- (c) the risk of the accused reoffending;
- (d) any planning of the alleged offence;
- (e) any threats made before or after the alleged offence;
- (f) the presence of children during the alleged offending;
- (g) any continuing threat to the health and safety of the victim or anyone else involved;
- (h) the current state of the relationship between the accused and the victim;
- (i) the history of the relationship, especially concerning any past violence;
- (j) the accused's criminal history, especially in connection with offences of violence.

17.5 If a victim is unwilling to testify, a decision to compel testimony requires serious consideration, and where the victim is the spouse of the accused, reference will need to be made to sections 57 and 57A of the *Criminal Procedure Ordinance*, Cap. 221. The prosecutor may by consent use the victim's

statement in evidence without requiring the victim to testify, under section 65B of the *Criminal Procedure Ordinance*, Cap. 221 and should consider whether any special procedures should be used.

18 Human Exploitation Cases

18.1 Under Article 1 of the *Universal Declaration of Human Rights* all human beings are born free and equal in dignity and rights. The exploitation of persons and the trafficking of them for that purpose are both serious crimes and violations of fundamental human rights and freedoms. The trafficking of a person involves the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation by means of:

- (a) threat or use of force or other forms of coercion;
- (b) abduction;
- (c) fraud;
- (d) deception;
- (e) the abuse of power or of a position of vulnerability; or
- (f) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

The trafficking of a child involves these elements except for the requirement of the means.

18.2 Human exploitation includes activities that demean the value of human life such as sexual exploitation, enforced labour, domestic servitude, debt bondage and

organ harvesting. Human exploitation is a domestic and international concern which should be handled by prosecutors with an appropriate level of understanding, skill and sensitivity. In appropriate cases, a prosecutor should consider a credible claim that a defendant or intended defendant is a victim of trafficking. If such a claim is found, a prosecutor should appropriately deal with the case bearing in mind that the person is a victim of trafficking. In this regard, reference can be made to applicable international standards and practices concerning victims of trafficking.

19 Public Order Events

19.1 Article 27 of the *Basic Law* guarantees Hong Kong residents "*freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration...*". Articles 16, 17 and 18 of the *Hong Kong Bill of Rights* give the same protections to other persons who are in Hong Kong.

19.2 Offences alleged to have been committed in conjunction with the exercise of these constitutionally guaranteed freedoms may give rise to special considerations. On the one hand, there is a positive duty on the authorities to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully; on the other hand, there is a need to protect persons and property by maintaining public order according to law.

19.3 Criminal prosecution should only be pursued when the relevant conduct exceeds sensible proportions or the bounds of reasonableness (*Yeung May-wan v HKSAR* (2005) 8 HKCFAR 137). Cases in relation to public order events

require the striking of a balance between the interest of society in maintaining public order and the right of a person lawfully and peacefully to exercise his or her rights.

20 Expert Witnesses

20.1 A court may receive the evidence of an expert that provides it with information that is likely to be outside its experience and knowledge. Expert evidence can only be given by a person with the requisite qualifications, knowledge and experience in the relevant field of expertise. An expert witness has an overriding duty to assist the court and should provide it with independent evidence in the form of objective unbiased opinion on matters within his or her expertise. In the interests of justice, a prosecutor should ensure that these requirements are always met.

20.2 Prosecutors should have regard to *Guidelines for Expert Witnesses* of the Prosecutions Division.

21 Post-conviction

Sentence

21.1 A prosecutor has an active role to play in the sentencing process by assisting the court to impose the appropriate penalty and to avoid appealable error; but a prosecutor should not attempt by advocacy to influence the court in relation to the quantum of sentence. A prosecutor should:

- (a) adequately (fully and accurately) present the relevant facts;
- (b) assist the court to avoid proceeding on any error of fact or law;
- (c) respond helpfully to any request by the court for relevant information;
- (d) fairly evaluate and, if necessary, test the opposing case and correct any apparent legal or factual error made by the defence in submissions;
- (e) provide information from previous relevant court decisions and official statistics;
- (f) where appropriate, make submissions on the type of sentence, but not quantum beyond providing a range supported by previous cases.

21.2 On sentencing, a prosecutor must not make representations about the Department's attitude to a sentence or act in any way to fetter the discretion of the Secretary for Justice or the Director of Public Prosecutions in a possible review of sentence.

Costs

21.3 In limited circumstances the court has discretion to award costs against a convicted offender, but usually not where a plea of guilty was entered.

21.4 There needs to be *"some feature of the trial indicating that as a consequence of the way in which the defendant conducted his defence, unnecessary or additional expenditure has had to be incurred by the prosecution or that the defendant has wilfully wasted the court's time"*: *HKSAR v Cheng Tak-wai* [2002] 4HKC 458. Such features may include:

- (a) the conduct of the accused throughout the trial proceedings;
- (b) the strength of the prosecution case at the commencement of the trial;
- (c) the accused's state of knowledge of the truth and the availability of any defence;
- (d) apparent intentional delay of the proceedings by the accused;
- (e) insistence by the accused on the proof of undeniable, unimportant or uncontested facts.

21.5 An award of costs is not intended to punish the accused, but to compensate the prosecution for needless expenses. The means of the accused will be taken into account when an order is being considered.

21.6 If an accused is acquitted or proceedings against him or her are stayed, he or she will normally be entitled to be compensated for the costs reasonably incurred. Positive reasons for not making such an order may include:

- (a) the accused has brought suspicion upon himself or herself by his or her conduct;
- (b) the accused's conduct has led the prosecution to assess the case as being stronger than it is;
- (c) the acquittal of the accused arose from a technicality (unless to refuse an order would violate the presumption of innocence in the accused's favour);
- (d) the accused failed to reveal at an early and appropriate time a good and valid explanation for his or her conduct, being either a non-evidential matter or an obvious explanation known only to the accused.

21.7 The prosecution may apply for costs if an appeal or application for leave to appeal by a convicted offender is dismissed, especially if it was without merit.

21.8 Costs awarded to the prosecution are recoverable as a civil debt. The criminal court has no jurisdiction to order imprisonment in default of payment.

Other Orders

21.9 Prosecutors should give due consideration to apply for other relevant orders from the court, for example, an order for compensation or restitution, an order of disqualification from driving, an order of disqualification as a director of a company, an order of confiscation or forfeiture, an order of criminal bankruptcy, and any other order that may be appropriate to the case.

22 Appeals and Reviews

Conviction

22.1 In an appeal against conviction, a prosecutor's duty is to assist the court to achieve a just and proper disposal of the appeal. It requires the prosecutor to readily and promptly seek to remedy any error or injustice and with equal commitment seek to support a correct and proper decision of the trial court.

22.2 If an appellant is unrepresented, a prosecutor should examine the case to see if any unidentified ground of appeal might also be available.

22.3 Ordinarily a prosecutor will seek to have the conviction upheld; but if it becomes apparent that there is a proper basis for conceding an appeal, that should be explained to the court. Such a concession should be made with the consent of the Director of Public Prosecutions in appropriate cases.

22.4 If a conviction is quashed on appeal, consideration must be given to the question of a retrial. Such an assessment may be influenced by:

- (a) the basis on which the appeal was allowed;
- (b) the seriousness of the offence;
- (c) the strength of the case against the accused, including the availability of witnesses;
- (d) the lapse of time between the offending and any retrial;
- (e) the extent to which the sentence has been served;
- (f) the views of any victim and of law enforcement agencies.

22.5 A third or subsequent trial should be held only in exceptional circumstances.

Sentence

22.6 On an appeal against sentence a prosecutor must assist the court by drawing its attention to the law and relevant decided cases in the area of sentencing for the offence in question. Cases in which sentencing guidelines or tariffs have been laid down are more helpful than cases of similar offences that are distinguishable on their own facts. Official sentencing statistics should also be provided where required. A prosecutor should address the court on relevant sentencing principles that may affect the determination of the appeal.

22.7 If a prosecutor is of the view that the sentence appealed is not authorised by law, is wrong in principle or is manifestly excessive, such a concession should be made with the consent of the Director of Public Prosecutions in appropriate cases.

Review of Sentence

22.8 The Secretary for Justice may apply to the court in exceptional cases for the review of a sentence on the basis that it has proceeded on an error of law or of principle or that it is manifestly inadequate or excessive.

22.9 The prosecutor must:

- (a) identify the errors and the principles that apply;
- (b) identify the authorities supporting that position;
- (c) make submissions on the correct resolution of the issues.

22.10 New evidence led on a sentence appeal or review cannot operate to enable the sentence to be increased.

Case Stated

22.11 Section 84 of the *District Court Ordinance*, Cap 336 and section 105 of the *Magistrates Ordinance*, Cap 227 enable the Secretary for Justice to appeal to the Court of Appeal and the Court of First Instance respectively by way of Case Stated from a decision of the trial judge or magistrate. This is an exceptional course and will only be undertaken when the determination or verdict or order of acquittal was erroneous in point of law.

23 Publication of Reasons

23.1 The Department of Justice is committed to operating in an open and accountable fashion, with as much transparency as is consistent with the interests of public justice. However, the benefit of justice being seen to be done must not be allowed to result in justice not being done.

23.2 Reasons for decisions made in the course of prosecutions or of giving advice may be given where practicable, orally or in writing, to those with a legitimate interest in the matter or where it is otherwise appropriate. A legitimate interest includes:

- (a) the interest of a court in knowing why a particular course of action has been taken;
- (b) the interest of a victim of crime in the conduct of a case;
- (c) the interest of an agency of government or an entity with a proper interest in knowing the basis of advice given;
- (d) the interest of the community and the media in the open dispensation of justice where previous proceedings have been public.

23.3 The prosecution has an obligation to assist, where appropriate, in public education about the conduct of the prosecution process. Reasons should ordinarily be expressed in terms of the general principles applied, rather than the details of individual cases.

23.4 There are circumstances in which the giving of reasons may be contrary to the public interest or otherwise inappropriate, including where to do so:

- (a) may prejudice ongoing investigations or the integrity of law enforcement;
- (b) may adversely affect the interests of a victim of crime, a witness, a suspect or an accused;
- (c) may adversely affect the administration of justice (especially in the case of a decision not to prosecute where public discussion may amount to a public trial without the safeguards of the criminal justice process);
- (d) may expose information given confidentially or sensitive information, the exposure of which may give rise to legitimate concern to individuals;
- (e) may be contrary to protections given by the *Personal Data (Privacy) Ordinance*, Cap. 486;
- (f) may be contrary to legal professional privilege (unless waived) or public interest immunity.

23.5 It will generally be unnecessary to give reasons for a decision to prosecute or to institute an appeal or review as the reasons will become apparent in the course of the proceedings themselves.

24 Media

24.1 The effective operation of the criminal justice system depends on its general acceptance by the community as a whole. That acceptance can only be maintained if the community is educated about the criminal justice process and receives fair and accurate information about criminal cases. The community depends on the media to provide most of the information it receives. The prosecution is well placed to assist the media by providing information about relevant matters

when appropriate. It should be accurate and complete information provided in a timely manner.

24.2 In communications with representatives of the media, a prosecutor may confirm facts that are already in the public domain upon request, including matters presented in open court (subject to any court order), the settled future course of events (e.g. trial date, pre-trial argument, when a particular witness may testify) and general open information about a case. However, a prosecutor is not obliged to provide information to the media.

24.3 Discretion must be used in relation to any sensitive material and steps should be taken to protect the personal privacy of individuals from unjustified interference.

24.4 The governing principles for the provision of information to the media are:

- (a) avoiding prejudice to fair trial interests including the presumption of innocence;
- (b) supporting the administration of justice and the integrity of the criminal justice system;
- (c) respecting the principle of open justice;
- (d) recognising the public interest in receiving accurate and timely information about the criminal justice system and criminal prosecutions;
- (e) treating victims of crime and witnesses with courtesy and compassion, and respecting their dignity and privacy.

24.5 In general, a prosecutor should not discuss with the media matters such as the following:

- (a) expressions of a prosecutor's personal opinion (for example, but not limited to, views about: the likely outcome of proceedings, the correctness or otherwise of a judicial decision, the credit of a witness, the admissibility of evidence, the correctness of a verdict, the adequacy of a sentence, the prospects of any appeal, the judge or members of the jury);
- (b) policy issues or personalities;
- (c) the intended approach of the prosecution in relation to a case;
- (d) any part of the proceedings not conducted at an open hearing;
- (e) personal particulars of a victim, a witness or a juvenile offender;
- (f) information that may lead to the identification of a protected person including an informer;
- (g) any privileged information (including internal Departmental communications and discussions with other agencies);
- (h) the existence of any plea negotiations or the possibility of a plea of guilty or other disposition;
- (i) evidence excluded at trial or not adduced in court proceedings.

24.6 Prosecutors may provide copies of public documents to the media to assist accurate reporting – documents such as an indictment or charge sheet, a statement of facts already admitted in open court. The media should not be provided with or given access to any video-recorded material (including tapes or discs of recorded interviews, re-enactments, demonstrations or identifications).

24.7 The media should not be provided with any witness statements, medical, psychiatric, psychological, or pre-sentence report on any offender, victim or witness.

24.8 Media questions should be referred to appropriate personnel within the Department of Justice:

- (a) in relation to controversial cases;
- (b) in relation to cases of particular sensitivity;
- (c) in relation to appeals;
- (d) in relation to reviews of sentences;
- (e) in relation to decisions to discontinue prosecutions;
- (f) in respect of prosecution policy.

24.9 The Director of Public Prosecutions should be consulted in relation to difficult enquiries.

Appendix I

GUIDELINES ON THE ROLE OF PROSECUTORS

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organisation and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress, the Committee was called upon to consider the need for guidelines relating, *inter alia*, to the selection, professional training and status of prosecutors,

their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
 - a. Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned

- b. Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional disadvantage by reason of their lawful action of their membership in a lawful organisation. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
9. Prosecutors shall be free to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
13. In the performance of their duties, prosecutors shall :
 - a. Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
 - b. Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - c. Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - d. Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human

rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.
17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.
22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.
24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Appendix II

STANDARDS OF PROFESSIONAL RESPONSIBILITY AND STATEMENT OF THE ESSENTIAL DUTIES AND RIGHTS OF PROSECUTORS

*Adopted by The International Association Of
Prosecutors On The Twenty Third Day Of April 1999*

WHEREAS the objects of the International Association of Prosecutors are set out in Article 2.3 of its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

WHEREAS the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

WHEREAS the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

WHEREAS the public need to have confidence in the integrity of the criminal justice system;

WHEREAS all prosecutors play a crucial role in the administration of criminal justice;

WHEREAS the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;

WHEREAS the exercise of prosecutorial discretion is a grave and serious responsibility;

AND WHEREAS such exercise should be as open as possible consistent with personal rights, sensitive to the need not to revictimise victims and should be conducted in an objective and impartial manner;

THEREFORE the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

1. PROFESSIONAL CONDUCT

1.1 Prosecutors shall :

- at all times maintain the honour and dignity of their profession;
- always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- at all times exercise the highest standards of integrity and care;
- keep themselves well-informed and abreast of relevant legal developments;
- strive to be, and to be seen to be, consistent, independent and impartial;
- always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- always serve and protect the public interest;

- respect, protect and uphold the universal concept of human dignity and human rights.

2. INDEPENDENCE

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

3.1 Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- carry out their functions impartially;
- remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- act with objectivity;

- have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

- 4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.
- 4.2 Prosecutors shall perform an active role in criminal proceedings as follows :
 - where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
 - when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
 - when giving advice, they will take care to remain impartial and objective;
 - in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;

- throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
- when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore:

- preserve professional confidentiality;
- in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;
- safeguard the rights of the accused in co-operation with the court and other relevant agencies;
- disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- seek to ensure that appropriate action is taken against those responsible for using such methods;

- in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

5.1 In order to ensure the fairness and effectiveness of prosecutions, prosecutors :

- shall co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and
- shall render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

6.1 In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;

- together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;
- to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
- to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
- to objective evaluation and decisions in disciplinary hearings;
- to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status; and
- to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.



Department of Justice

www.doj.gov.hk

第245章

《公安條例》

29/06/2017

Cap. 245

Public Order Ordinance

29/06/2017

18. 非法集結

- (1) 凡有3人或多於3人集結在一起，作出擾亂秩序的行為或作出帶有威嚇性、侮辱性或挑撥性的行為，意圖導致或相當可能導致任何人合理地害怕如此集結的人會破壞社會安寧，或害怕他們會藉以上的行為激使其他人破壞社會安寧，他們即屬非法集結。 (由1970年第31號第11條修訂)
- (2) 集結的人如作出如上述般的行為，則即使其原來的集結是合法的，亦無關重要。
- (3) 任何人如參與憑藉第(1)款屬非法集結的集結，即犯非法集結罪—— (由1970年第31號第11條修訂)
 - (a) 一經循公訴程序定罪，可處監禁5年；及
 - (b) 一經循簡易程序定罪，可處第2級罰款及監禁3年。

(編輯修訂——2013年第1號編輯修訂紀錄)

18. Unlawful assembly

- (1) When 3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such conduct provoke other persons to commit a breach of the peace, they are an unlawful assembly. (Amended 31 of 1970 s. 11)
- (2) It is immaterial that the original assembly was lawful if being assembled, they conduct themselves in such a manner as aforesaid.
- (3) Any person who takes part in an assembly which is an unlawful assembly by virtue of subsection (1) shall be guilty of the offence of unlawful assembly and shall be liable— (Amended 31 of 1970 s. 11)
 - (a) on conviction on indictment, to imprisonment for 5 years; and
 - (b) on summary conviction, to a fine at level 2 and to imprisonment for 3 years.

(Amended E.R. 1 of 2013)

19. 暴動

- (1) 如任何參與憑藉第18(1)條被定為非法集結的集結的人破壞社會安寧，該集結即屬暴動，而集結的人即屬集結暴動。 (由1970年第31號第12條修訂)
- (2) 任何人參與暴動，即犯暴動罪——
 - (a) 一經循公訴程序定罪，可處監禁10年；及
 - (b) 一經循簡易程序定罪，可處第2級罰款及監禁5年。

(編輯修訂——2013年第1號編輯修訂紀錄)

19. Riot

- (1) When any person taking part in an assembly which is an unlawful assembly by virtue of section 18(1) commits a breach of the peace, the assembly is a riot and the persons assembled are riotously assembled. (Amended 31 of 1970 s. 12)
- (2) Any person who takes part in a riot shall be guilty of the offence of riot and shall be liable—

- (a) on conviction on indictment, to imprisonment for 10 years; and
- (b) on summary conviction, to a fine at level 2 and to imprisonment for 5 years.

(Amended E.R. 1 of 2013)

〈獨立監察警方處理投訴委員會條例〉
(第 604 章)

Independent Police Complaints Council Ordinance
(Cap. 604)

版本日期 Version date 28.6.2019

經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

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條文 Provision	頁數 Page number	最後更新日期 Last updated date
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第 4 部 Part 4	4-1—4-8	28.6.2019
第 5 部 Part 5	5-1—5-8	28.6.2019
第 6 部 Part 6	6-1—6-8	28.6.2019
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附表 1 Schedule 1	S1-1—S1-28	28.6.2019
附表 2 Schedule 2	S2-1—S2-2	28.6.2019

尚未實施的條文 / 修訂——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<https://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

Please see Hong Kong e-Legislation (<https://www.elegislation.gov.hk>) for information of provisions and amendments not yet in operation.

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〈獨立監察警方處理投訴委員會條例〉

Independent Police Complaints Council Ordinance

(第 604 章)

(Cap. 604)

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《獨立監察警方處理投訴委員會條例》

本條例旨在使現存的投訴警方獨立監察委員會成立為法團；為該委員會在監察警務處處長處理和調查須匯報投訴方面的職能訂定條文；為該委員會的關乎其事務和運作的權力訂定條文；為就須匯報投訴委任觀察員一事訂定條文；以及為相關事宜訂定條文。

[2009 年 6 月 1 日] 2009 年第 36 號法律公告
(格式變更——2019 年第 3 號編輯修訂紀錄)

(略去制定語式條文——2019 年第 3 號編輯修訂紀錄)

第 1 部
導言

1. **簡稱**
本條例可引稱為《獨立監察警方處理投訴委員會條例》。
2. (已失時效而略去——2019 年第 3 號編輯修訂紀錄)
3. **釋義**
(1) 在本條例中，除文意另有所指外——
分類 (classification) 指經調查後由處長將須匯報投訴作以下分類——
(a) 獲證明屬實；
(b) 未經舉報但證明屬實；
(c) 無法完全證明屬實；

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.

[1 June 2009] L.N. 36 of 2009
(Format changes—E.R. 3 of 2019)

(Enacting provision omitted—E.R. 3 of 2019)

Part 1
Preliminary

1. **Short title**
This Ordinance may be cited as the Independent Police Complaints Council Ordinance.
2. (Omitted as spent—E.R. 3 of 2019)
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—

- (d) 無法證實；
- (e) 虛假不確；
- (f) 並無過錯；
- (g) 投訴撤回；
- (h) 無法追查；
- (i) 終止調查；
- (j) 透過簡便方式解決；或
- (k) 監警會與處長議定的其他類別；

主席 (Chairman) 指第 5(1)(a) 條提述的監警會主席，並包括根據附表 1 第 5 條獲委任而署任主席的人；

投訴人 (complainant) 指作出某投訴或覆核要求的人，如某人代另一人作出投訴或覆核要求，則指由該人代為作出該投訴或覆核要求的該另一人；

材料 (material) 包括任何文件或任何形式的紀錄，以及任何物品或物質；

委任成員 (appointed member) 指第 5(1)(c) 條提述的監警會成員，並包括根據附表 1 第 5 條獲委任而署任成員的人；

委員會 (committee) 包括監警會根據附表 1 第 17 條設立的任何專責委員會或小組；

法律顧問 (Legal Adviser) 指根據第 6(1) 條獲委任的監警會法律顧問；

秘書長 (Secretary-General) 指根據第 6(1) 條獲委任的監警會秘書長；

副主席 (Vice-Chairman) 指第 5(1)(b) 條提述的監警會副主席，並包括根據附表 1 第 5 條獲委任而署任副主席的人；

處長 (Commissioner) 指警務處處長；

須知會投訴 (notifiable complaint) 指按照第 14 條歸類為須知會投訴的投訴；

須匯報投訴 (reportable complaint) 指 ——

- (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;

- (a) 按照第 11 條歸類為須匯報投訴的投訴；或
- (b) 按照第 13 條視為須匯報投訴的覆核要求；

監事會 (Council) 指由第 4 條設立的法人團體；

精神上無行為能力的人 (mentally incapacitated person) 指《精神健康條例》(第 136 章) 所指的患有精神紊亂或屬弱智的人；

歸類 (categorization) 指由處長將某投訴歸類為——

- (a) 須匯報投訴；或
 - (b) 須知會投訴；
- 職能 (function)** 包括權力及責任；
- 覆核要求 (request for review)** 指第 13 條提及的要求覆核某須匯報投訴的分類的覆核要求；
- 警方行為 (police conduct)** 指第 11(a) 條提及的行為、常規或程序；

警隊 (police force) 指香港警務處或根據《香港輔助警隊條例》(第 233 章) 設立的香港輔助警察隊；

警隊成員 (member of the police force) 包括派駐警隊工作的公職人員；

觀察員 (observer) 指根據第 33 條獲委任為觀察員的人。

(編輯修訂——2019 年第 3 號編輯修訂紀錄)

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);

(2) 在本條例中，凡提述執行職能之處，均包括行使權力及履行責任。

(3) 在第 8(1)(b)、19(1)(d)、26 及 40(3)(b) 條中，凡提述已經或將會對任何警隊成員採取的行動，均包括不對該成員採取任何行動的決定。

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.

第 2 部

Part 2

獨立監察警方處理投訴委員會成立為法團

Incorporation of Independent Police Complaints Council

4. 監警會成立為法團

- (1) 現設立一個——
 - (a) 英文名稱為“Independent Police Complaints Council”；及
 - (b) 中文名稱為“獨立監察警方處理投訴委員會”，的法人團體。
- (2) 監警會屬永久延續，並可以其中文名稱或英文名稱起訴和被起訴。
- (3) 監警會不是政府的僱員或代理人，亦不享有政府的地位、豁免權或特權。

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. 監警會的成員

- (1) 監警會由以下成員組成——
 - (a) 由行政長官委任的主席一名；
 - (b) 由行政長官委任的副主席 3 名；及
 - (c) 由行政長官委任的其他成員 8 名或以上。
- (2) 以下的人不具備根據第 (1) 款獲委任的資格——
 - (a) 在政府政策局或部門擔任受薪職位（不論屬長設或臨時性質）的人；及
 - (b) 曾屬警隊成員的人。

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. **秘書長、法律顧問及其他僱員的委任**

- (1) 監警會必須按行政長官在參照監警會意見後批准的僱用條件，委任一名秘書長及一名法律顧問。
- (2) 監警會可按它決定的僱用條件，委任為協助它執行其職能所需的其他僱員。
- (3) 監警會可按它認為合適的方式及條件，聘用任何人提供技術或專業服務。

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. **附表 1 適用於監警會**

附表 1 就以下事宜具有效力：監警會成員、監警會的處事程序、委員會、財務事宜及監警會簽立文件，以及監警會其他雜項事宜。

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

第3部

監警會的職能

8. 監警會的職能

8. Functions of Council

(1) 監警會的職能是——

(1) The functions of the Council are—

- (a) 觀察、監察和覆檢處長對須匯報投訴的處理和調查，並（如監警會認為適當）就須匯報投訴的處理或調查，向處長或行政長官或兼向上述兩者作出建議；
 - (b) 監察處長已經或將會在與須匯報投訴有關連的情況下對任何警隊成員採取的行動，並（如監警會認為適當）向處長或行政長官提供或兼向上述兩者提供它對該行動的意見；
 - (c) 在警隊採納的常規或程序中，找出已經或可能會引致須匯報投訴的缺失或不足之處，並（如監警會認為適當）就該等常規或程序，向處長或行政長官或兼向上述兩者作出建議；
 - (d) 覆檢處長依據本條例向它呈交的任何事項；
 - (e) 加強公眾對監警會的角色認識；及
 - (f) （在不限制上文的一般性的原則下）由或根據本條例或其他條例授予它的任何職能。
- (2) 監警會可作出為執行它在本條例下的職能而合理地需要作出，或附帶於或有助於執行該等職能的所有事情。

- (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.

第 1 分部 —— 關乎處長將投訴歸類的職能

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

9. 處長須呈交投訴列表

9. Commissioner to submit lists of complaints

- (1) 處長必須按他與監警會議定的相隔期間及方式，向監警會呈交——
 - (a) 一份須匯報投訴列表；及
 - (b) 一份須知會投訴列表。
- (2) 根據第 (1)(a) 款呈交的列表，必須包括處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有須匯報投訴的扼要描述。
- (3) 根據第 (1)(b) 款呈交的列表，必須包括——
 - (a) 處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有須知會投訴的扼要描述；
 - (b) 將該等投訴歸類為須知會投訴的理由；及
 - (c) 就僅因投訴並不屬性質嚴重的理由而不予歸類為須匯報投訴的逾期投訴（第 12(3) 條所界定者）而言，支持該理由的原因。

- (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. 第 9(1) 條所指的列表不得包括某些投訴

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

- 第 9(1)(a) 或 (b) 條所指的列表，不得包括以下投訴——
 - (a) 某人以他本人身為警隊成員的公務身分作出的投訴；

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

- (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;

- (b) 由發出傳票而產生，並且是僅關乎該傳票是否有效地發出的問題的投訴；
- (c) 由根據任何成文法則發出施加定額罰款通知書而產生，並且是僅關乎該通知書是否有效地發出的問題；或
- (d) 某人依據任何其他條例授予他的職能而有權調查的投訴，但如該投訴與警方行為有關而該調查權力並不擴及至可調查該警方行為，則屬例外。

11. 歸類為須匯報投訴的投訴

在符合第 10、12 及 13 條的規定下，如處長接獲的投訴——

- (a) 關乎——
 - (i) 某警隊成員在當值或執行職務或其意是執行職務時的行為（無論他是否有表露他本人屬上述成員）；
 - (ii) 某警隊成員在休班並表明他是警隊成員的情況下的行為；或
 - (iii) 警隊採納的任何常規或程序；
- (b) 並非瑣屑無聊或無理取鬧而且是真誠地作出的；
- (c) 由受到該警方行為直接影響的投訴人作出，或由某人代該投訴人作出；
- (d) 由妥為表露身分並向處長提供本身的聯絡方法的人作出（不論是由他本人作出或代投訴人作出）；及
- (e) （在某人代投訴人作出投訴的情況下）屬按照第 15 條作出，

則該投訴必須歸類為須匯報投訴。

- (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. 逾期投訴的歸類

- (1) 除第(2)款另有規定外，逾期投訴不得歸類為須匯報投訴。
- (2) 某逾期投訴如——
 - (a) 性質嚴重；並且
 - (b) 若非因第(1)款，便會按照第 11 條歸類為須匯報投訴，

則該逾期投訴必須歸類為須匯報投訴。

- (3) 在本條中，**逾期投訴** (belated complaint) 指在以下時間屆滿之後向處長作出的投訴——

- (a) 自導致該投訴的事件發生的日期起計的 24 個月；或
 - (b) (如在(a)段提述的期間內，關乎該投訴所針對的事項的法律程序，已在任何法庭、裁判法院或法定審裁處展開)自該等法律程序獲最終裁定作出之日起計的 12 個月，
- 兩者以較後者為準。

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. 覆核要求視為須匯報投訴

- (1) 在不抵觸第(2)款的條文下，向處長作出的要求覆核某須匯報投訴的分類(有關分類)的覆核要求，僅在該覆核要求符合以下說明的情況下，方可視為須匯報投訴——

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) 並非瑣屑無聊或無理取鬧；
 - (b) 是真誠地作出的；及
 - (c) (在某人代投訴人作出投訴的情況下) 屬按照第 15 條作出的。
- (2) 覆核要求不得尋求覆核分類為“透過簡便方式解決”的須匯報投訴。
- (3) 凡進行上述覆核，處長無須重新調查或進一步調查於作出有關分類決定時已經考慮的任何事實或證據，但如作出上述覆核要求的人就該事實或證據的分析，提出一項觀點，而——
- (a) 處長在作出有關分類決定時並無考慮該觀點；
 - (b) 該觀點如在重新調查或進一步調查該事實或證據後獲確立，便可能導致有關分類有所改變；及
 - (c) 為考慮該觀點而重新調查或進一步調查該事實或證據屬合理所需，
- 則不在此限。

- (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. 歸類為須知會投訴的投訴

處長接獲的投訴如既非須匯報投訴，亦非第 10 條提及的投訴，則必須歸類為須知會投訴。

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. 代投訴人作出投訴或覆核要求

(1) 為施行本條例，某人(有關代表)僅可在以下情況下代某

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

投訴人作出投訴或覆核要求 ——

- (a) 在投訴或覆核要求（視屬何情況而定）作出時，該投訴人未滿 16 歲，而有關代表是他的親屬或監護人；
 - (b) 該投訴人是精神上無行為能力的人，或因死亡或疾病而不能夠親自作出投訴或覆核要求（視屬何情況而定），而有關代表是 ——
 - (i) 該投訴人的親屬；或
 - (ii) 該投訴人的監護人（《精神健康條例》（第 136 章）第 2(1) 條所界定者）；或
 - (c) 有關代表獲該投訴人書面授權代該投訴人作出投訴或覆核要求（視屬何情況而定）。
- (2) 就第 (1) 款而言，**親屬 (relative)** 指 ——
- (a) 配偶、子女、父母、祖父母或外祖父母、孫、孫女、外孫或外孫女；
 - (b) 兄弟、姊妹、伯父母、叔父母、舅父母、姑丈或姑母、姨丈或姨母，或該等人的後嗣。
- (3) 為第 (1) 及 (2) 款的目的而推究關係時 ——
- (a) 受領養人須視為其領養人的子女；
 - (b) 因婚姻而產生的關係須視為血親關係，半血親關係須視為全血親關係，而任何人的繼子女須視為該人的子女；及
 - (c) 非婚生子女須視為其母親及據稱的父親的婚生子女。

- (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

16. 處長重新考慮歸類

- (1) 監警會如認為根據第 9 條包括在須知會投訴列表上的某投訴應歸類為須匯報投訴，可向處長提供其意見，而處長必須——
- (a) 顧及上述意見；及
- (b) 重新考慮該投訴的歸類。
- (2) 處長必須在完成第 (1) 款所指的重新考慮後，在切實可行範圍內，盡快知會監警會他重新考慮的所得結果。
- (3) 為執行第 (1) 款所指的監警會的職能，監警會可——
- (a) 要求處長提供支持將某投訴歸類為須知會投訴的解釋；
- (b) 就僅因投訴並不屬性質嚴重的理由而不予歸類為須匯報投訴的逾期投訴（第 12(3) 條所界定者）而言，要求處長提供支持該理由的解釋；及
- (c) 要求處長提供支持該等解釋的資料或材料。

- (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.

第 2 分部 —— 關乎須匯報投訴的調查報告或中期調查報告的職能

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

17. 處長須呈交匯報投訴的調查報告

- (1) 處長必須在完成某須匯報投訴的調查後，在切實可行範圍內，盡快向監警會呈交調查報告。

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

- (2) 除第(3)款另有規定外，根據第(1)款呈交的調查報告必須載有——
- (a) 有關調查的概要；
 - (b) 就有關投訴所作的對事實的裁斷，及支持該裁斷的證據；
 - (c) 有關投訴的分類，及作該分類的理由；
 - (d) 一項敘述，述明處長已經或將會在與有關投訴有關連的情況下採取的行動；
 - (e) 處長認為需要的資料；及
 - (f) 處長與監警會議定的其他資料。
- (3) 被分類為屬透過簡便方式解決的某須匯報投訴的調查報告，必須——
- (a) 載有——
 - (i) 透過簡便方式解決該須匯報投訴的過程摘要；
 - (ii) 投訴人所描述的導致該須匯報投訴產生的事件
的敘述；
 - (iii) (如已識別被投訴人的身分)被投訴人所描述的
導致該須匯報投訴產生的事件的敘述；
 - (iv) 一項敘述，述明處長已經或將會在與該須匯報
投訴有關連的情況下採取的行動；
 - (v) 處長認為需要的資料；及
 - (vi) 處長與監警會議定的其他資料；及
 - (b) 解釋透過簡便方式解決該須匯報投訴的理由。
- (4) 在第(1)及(2)款中，凡提述調查報告，均包括補充某份先前的調查報告的調查報告。

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

18. 處長須呈交匯報投訴的中期調查報告

- (1) 如某須匯報投訴的調查未能在以下期間內完成——
- (a) 自接獲有關投訴的日期起計的6個月；或
 - (b) 監警會與處長議定的較短期間，
- 處長必須在該6個月或該較短期間屆滿後，在切實可行範圍內，盡快向監警會呈交中期調查報告。
- (2) 在有關調查完成之前，處長必須在以下期間屆滿後，向監警會呈交進一步的中期調查報告——
- (a) 每段接續的為期6個月的期間；或
 - (b) 每段接續的監警會與處長議定的較短期間。
- (3) 根據第(1)或(2)款呈交的中期調查報告必須——
- (a) 載有有關調查的進度的撮要；及
 - (b) 解釋未能在該報告所涵蓋的6個月期間或較短期間內完成調查的理由。
- (4) 監警會可向處長提供它對中期調查報告的意見。

(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. 監警會可向處長提供它對調查報告的意見或建議

(1) 監警會可就根據第 17 條呈交的調查報告，向處長提供——

- (a) 它對有關投訴所屬分類的建議；
- (b) 它對處長處理或調查有關投訴的建議；
- (c) 它對在警隊採納的常規或程序中找出的缺失或不足之處的建議；
- (d) 對於處長已經或將會在與有關投訴有關連的情況下對某警隊成員採取的行動的意見；或
- (e) 除 (a)、(b) 及 (c) 段所述的建議外，它對該報告的建議。

(2) 如調查報告因應第 (1) 款提及的監警會的建議而修訂，處長必須在切實可行範圍內，盡快向監警會呈交該經修訂的報告。

(3) 監警會如認為適當，可將第 (1) 款提及的它的意見或建議的任何部分，呈交行政長官考慮。

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. 監警會可進行會面

(1) 在調查報告根據第 17 條呈交監警會後的任何時間，監警

20. Council may conduct interview

(1) At any time after an investigation report has been submitted

《獨立監察警方處理投訴委員會條例》

會可為考慮該報告的目的，會見任何能夠或可能能夠就該報告向監警會提供資料或其他協助的人。

- (2) 在中期調查報告根據第 18 條呈交監警會後的任何時間，監警會可在處長同意下，為考慮該報告的目的，會見任何能夠或可能能夠就該報告向監警會提供資料或其他協助的人。
- (3) 除非處長合理地認為根據第 (2) 款進行的會面，相當可能會損害對任何罪行的調查或對他作出的任何投訴的調查，否則他必須同意有關的會面。
- (4) 本條所指的會面必須以非公開形式進行。
- (5) 在不抵觸第 (7) 款的條文下，監警會可決定誰人可在會面時在場。
- (6) 除非律師或大律師是根據本條接受會見的人，否則他在會面中，沒有向監警會發言的權利。
- (7) 如任何根據本條接受會見的人(該人)未滿 16 歲，或如監警會知道該人屬精神上無行為能力的人，則該人必須在以下的人在場時接受會見——
 - (a) 他的父母或監護人；
 - (b) 某名在該人的福利方面具有利害關係，並且被監警會認為適合在會面時在場的成年人；或
 - (c) 監警會在任何特定個案中決定的其他人。
- (8) 即使有第 (5) 及 (7)(c) 款的規定(但在不損害第 (6) 款的情況下)，監警會會見的人有權在他的律師或大律師陪同下，出席本條所指的會面。

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.

21. 會面紀錄

- (1) 監警會必須就根據第 20 條進行的每次會面製備紀錄，而該紀錄須在為執行監警會在本條例下的職能所需的期間內，予以保存。
- (2) 上述紀錄可在第 40(2) 條所訂的情況下使用，但不得在其他情況下使用。

第 3 分部 —— 關乎須匯報投訴的其他職能等

22. 監警會可要求處長提供關乎須匯報投訴的資料等

- (1) 監警會可要求處長——
 - (a) 提供關乎某須匯報投訴的任何資料或材料，包括（但不限於）——
 - (i) 由警隊成員就某須匯報投訴而向他會見的人錄取的任何書面陳述；及
 - (ii) 任何錄影紀錄；及
 - (b) 澄清關乎某須匯報投訴的任何事實、差異或裁斷。
- (2) 在本條中，**錄影紀錄** (video recording) 指以任何媒介記錄的紀錄，並包括附連的聲軌，而該紀錄可藉任何方法產生移動的影像。

- (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. 監警會可要求處長調查須匯報投訴

- (1) 在不抵觸第(2)款的條文下，監警會可要求處長調查某須匯報投訴（不論先前已否作出調查）。
- (2) 如有關須匯報投訴屬覆核要求，則除第13(3)條另有規定外並只有在以下情況下，監警會方可要求處長調查關乎該覆核要求的任何事宜（不論先前已否作出調查）——
 - (a) 就某須匯報投訴而作出的首次覆核要求而言，該覆核要求在以下的人獲處長通知該須匯報投訴的分類後的30天內作出——
 - (i) 投訴人；或
 - (ii) (如有關須匯報投訴是由某人代投訴人作出)作出該投訴的人；
 - (b) 就某須匯報投訴而作出的第二次或其後的覆核要求而言，該覆核要求在以下的人獲監警會通知他，處長就上一次覆核該須匯報投訴的分類結果後的30天內作出——
 - (i) 投訴人；或
 - (ii) (如上一次的覆核要求是由某人代投訴人作出)作出上一次覆核要求的人；或
 - (c) 在某期間根據(a)或(b)段而適用於某覆核要求的情況下，就在該期間屆滿後才作出的該覆核要求而言，監警會認為就該覆核要求有特殊情況存在。
- (3) 監警會在為施行第(2)(c)款而決定是否有特殊情況存在時，可考慮包括（但不限於）以下因素的任何因素——
 - (a) 就有關覆核要求而言，是否有任何新證據；及
 - (b) 是否有充分理由支持有關覆核要求在根據第(2)(a)或(b)款對其適用的期間屆滿後才作出。

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,
 - (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 Commissioner of the classification of the reportable complaint;
- 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. 就須匯報投訴的分類及覆核結果作出通知

- (1) 如有不屬覆核要求的某須匯報投訴，則處長必須通知——
 - (a) 投訴人；或
 - (b) (如有關須匯報投訴是由某人代投訴人作出) 作出該投訴的人，有關須匯報投訴的分類，以及作該分類的理由。
- (2) 如有屬覆核要求的某須匯報投訴，則監警會必須將有關覆核的結果及其理由，通知——
 - (a) 投訴人；或
 - (b) (如該須匯報投訴是由某人代投訴人作出) 作出該須匯報投訴的人。
- (3) 如投訴人或有關的人已向處長或監警會表示，他不欲如此獲通知，第(1)及(2)款並不適用。

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

- (4) 在斷定投訴人或有關的人獲通知第(1)或(2)款規定事項的時間的過程中，以下條文適用——
- (a) 如該通知是留在他的地址的，該通知在如此留下之時，即告作出；
 - (b) 如該通知是郵寄往他的地址的，該通知在經一般郵遞程序會寄達該地址之時，即告作出；
 - (c) 如該通知是藉傳真傳送往他的傳真號碼的，該通知在經一般傳送的程序會在該號碼接獲之時，即告作出；或
 - (d) 如該通知是藉電子郵遞傳送往他的電子郵件地址的，該通知在經一般傳送的程序會在該地址接獲之時，即告作出。
- (5) 在第(4)款中，凡提述他的地址、傳真號碼或電子郵件地址，指由投訴人或有關的人提供予處長或監警會的、作為就有關須匯報投訴與他聯絡的方法的地址、傳真號碼或電子郵件地址（視屬何情況而定）。

- (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. 監警會成員可出席會面及觀察證據收集

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

- (1) 監警會成員可在任何時間並且未經預約而——
- (a) 出席處長就某須匯報投訴而進行的會面；及
 - (b) 觀察處長在某須匯報投訴的調查中的證據收集。
- (2) 當監警會成員出席有關會面或觀察有關證據收集時，第 37 及 38 條在經所需的變通後適用於該成員，猶如該兩條條文中提述觀察員之處即提述該成員一樣。

- (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. **監警會可就已經在與須匯報投訴有關連的情況下採取的行動等要求解釋**

監警會可要求處長，就已經或將會在與任何須匯報投訴有關連的情況下對某警隊成員採取的行動，提供解釋。

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. **監警會可要求處長呈交統計數字及報告**

監警會可要求處長——

- (a) 編製並向監警會呈交引致須匯報投訴的警隊成員行為的種類的統計數字；及
- (b) 就處長已經或將會就監警會根據第 8(1)(a) 或 (c) 條作出的建議而採取的行動，向監警會呈交報告。

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. **處長就關乎處理或調查須匯報投訴的通告及手冊諮詢監警會**

- (1) 處長必須就以下事宜諮詢監警會——

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

- (a) 任何關乎處理或調查須匯報投訴的建議的新警隊通令或手冊；或
- (b) 建議對以下文書作出的重大修訂，但僅限於在關乎處理或調查須匯報投訴的範圍內者——
- (i) 根據《警隊條例》(第 232 章)第 46 條訂立的警察通例；
 - (ii) 根據該條例第 47 條發出的總部通令；
 - (iii) 《香港警務處程序手冊》；或
 - (iv) 警隊的任何其他通令或手冊。
- (2) 就第(1)(b)款而言，任何修訂如對以下事項有關鍵性的改變，即屬重大修訂——
- (a) 警隊的有關通令或手冊的任何條文的涵義或釋義；或
 - (b) 須根據該條文依循的程序。

- (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. 處長須遵從監警會的要求

- (1) 儘管有《警隊條例》(第 232 章)第 4 條的規定，除非保安局局長證明，遵從監警會根據本條例作出的要求，便相當可能會損害——
- (a) 香港的保安；或
 - (b) 任何罪案的調查，
- 否則處長必須遵從該要求。
- (2) 一份由保安局局長簽署證明第(1)(a)或(b)款提述的事宜的證明書，即屬如此獲證明的事宜的確認。

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. 向行政長官報告

監警會可向行政長官作出它認為有需要的報告。

30. Report to Chief Executive

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

第 4 分部 —— 監警會的關乎其事務的權力

Division 4—Council's Powers relating to its Affairs

31. 監警會可收取費用

監警會可就提供監警會文件或刊物的複製本或文本或摘錄，收取合理費用。

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. 監警會可持有財產、訂立合約及借入款項

為施行本條例，監警會可——

- (a) 取得、持有及處置動產或不動產；
- (b) 訂立合約或其他協議；及
- (c) 在財政司司長的批准下，以提供保證的方式或按其他條件借入款項。

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.

第 4 部

觀察員計劃

33. 觀察員的委任

- (1) 在符合第(2)款的規定下，保安局局長可委任他認為合適的人為觀察員。
- (2) 以下人士不具備獲委任為觀察員的資格——
 - (a) 在政府政策局或部門擔任受薪職位（不論屬長設或臨時性質）的人；
 - (b) 秘書長、法律顧問或監警會任何其他僱員；及
 - (c) 曾屬警隊成員的人。

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. 觀察員的職能

觀察員的職能是協助監警會按照本部的條文觀察處長處理或調查匯報投訴的方式。

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. 附表 2 適用於觀察員

附表 2 就觀察員具有效力。

35. Schedule 2 applicable to observers

Schedule 2 has effect with respect to observers.

36. 就會面及證據收集作事先通知

- (1) 處長必須在切實可行範圍內，盡可能在——
 - (a) 他就某須匯報投訴進行會面之前；或
 - (b) 他就某須匯報投訴的調查而進行任何證據收集之前，將該會面或證據收集通知監警會。

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,

(2) 有關通知必須列出——

- (a) 有關須匯報投訴載有的指稱的性質；
 - (b) 有關會面或證據收集的日期、時間及地點，以及進行會面或證據收集的形式；及
 - (c) 接受會見的人及進行會見的人的詳情。
- (3) 凡處長在沒有事先通知監督會的情況下，進行第(1)款所述的會面或證據收集（**有關事件**），處長必須在有關事件後，在切實可行範圍內，盡快以書面——
- (a) 將該事件通知監督會；
 - (b) 向監督會解釋沒有給予該事先通知的理由；及
 - (c) 向監督會提供以下資料：倘若有給予事先通知，則根據第(2)款規定本須就有關會面或證據收集而列出的資料。

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. 觀察員可出席會面及觀察證據收集

- (1) 為施行第 34 條，觀察員可在任何時間並且未經預約而——
 - (a) 出席處長就某須匯報投訴而進行的會面；及
 - (b) 觀察處長在某須匯報投訴的調查中的證據收集。
- (2) 觀察員在出席會面或在觀察證據收集之後，必須向監督會呈交報告，述明——
 - (a) 他是否認為有關會面或證據收集是以公平和不偏不倚的方式進行；及

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.

(b) (在適用情況下) 觀察員就該會面或證據收集而察覺的任何不當情況的詳情。

(3) 如處長就某須匯報投訴進行會面或證據收集，而某觀察員在該須匯報投訴中，有利害關係(不論屬直接或間接)，則該觀察員不得出席會面或觀察證據收集。

(4) 如在有關會面或證據收集的過程中，觀察員知悉他在有關的須匯報投訴中，有利害關係(不論屬直接或間接)，他必須——

(a) (如屬會面) 向下述的人披露其利害關係的性質——
(i) 獲處長指派進行有關會面的警務人員；及

(ii) 接受會見的人；

(b) (如屬證據收集) 向下述的人披露其利害關係的性質——

(i) 獲處長指派進行收集有關證據的警務人員；及

(ii) (如適用的話) 屬收集證據的對象的人；

(c) 退出有關會面或停止觀察有關證據收集(視屬何情況而定)；及

(d) 向監督會報告其利害關係的性質。

(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

38. 監警會可決定關於觀察員的程序、執勤輪值表等

- (1) 監警會可決定——
- (a) 就觀察員出席處長就某須匯報投訴進行的會面而適用的程序；
 - (b) 就觀察員觀察處長在某須匯報投訴的調查中的證據收集而適用的程序；
 - (c) 編定觀察員的執勤輪值表；及
 - (d) 關於觀察員根據本部條文執行職能的運作事宜或安排。
- (2) 為免生疑問，第(1)(c)款所指的執勤輪值表，不影響觀察員根據第 37(1)條在任何時間出席會面或觀察證據收集的權利。

- (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.

第 5 部

保密及對監警會及其成員等的保障

Part 5

Confidentiality and Protection of Council and its Members, etc.

39. 第 5 部的釋義

在本部中——

受保護資料 (protected information) 指任何指明人士在執行他在本條例下的職能的過程中實際知悉的、關乎任何投訴的事宜；

指明人士 (specified person) 指——

- (a) 監警會；
- (b) 監警會成員；
- (c) 秘書長、法律顧問或監警會任何其他僱員；
- (d) 監警會聘用的提供技術或專業服務的人；
- (e) 觀察員；或
- (f) 曾在任何時間具備 (b)、(c)、(d) 及 (e) 段描述的任何身分的人。

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. 保密責任

- (1) 除在第 (2) 款所訂的情況下，指明人士不得披露任何受保護資料。
- (2) 如指明人士披露任何受保護資料是為以下目的而屬必需的——
 - (a) 為執行他在本條例下的職能；
 - (b) 為向他認為適當的有關當局報告關於任何罪行或任何懷疑罪行的證據；

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;

- (c) 為遵從關乎任何刑事或民事法律程序或紀律處分程序的——
- (i) 法庭的命令；或
 - (ii) 某項成文法則或任何其他法律所訂的規定，或根據某項成文法則或任何其他法律而作出的規定；或
- (d) 為遵從根據《個人資料(私隱)條例》(第 486 章)第 18 條提出的查閱資料要求，
- 則第 (1) 款並不阻止有關指明人士披露該受保護資料。
- (3) 為免生疑問，在根據第 (2)(a) 款作出披露時，監警會可向公眾披露——
- (a) 監警會與處長對某須匯報投訴的裁斷或分類有意見分歧的事實；或
 - (b) 監警會對以下行動的意見：處長已經或將會在與某須匯報投訴有關連的情況下對任何警隊成員採取的行動。
- (4) 除第 (5) 款另有規定外，第 (2)(a) 款並不授權披露以下的人的身分——
- (a) 任何投訴人；
 - (b) 行為屬某投訴的對象的警隊成員；或
 - (c) 協助或曾協助處長處理或調查某投訴的人。
- (5) 如第 (4)(a)、(b) 或 (c) 款提述的身分是向以下人士披露的，該項披露可依據第 (2)(a) 款作出——
- (a) 第 39 條所界定的指明人士(該定義的 (f) 段所指的人除外)；
 - (b) 有關投訴人；
 - (c) 任何獲投訴人書面授權——
 - (i) 代該投訴人作出投訴或覆核要求(第 15 條訂明者)的人；或

- (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—

(ii) 代替該投訴人處理由投訴人作出的投訴或覆核要求的人；

(d) 處長；

(e) 協助或曾協助處長處理或調查某投訴的人；

(f) 依據第 20 條獲監督會邀請參加會面的人，或按照該條出席會面的任何人；或

(g) 行政長官。

- (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. 對監督會及其成員等的保障

- (1) 如某指明人士在執行或其意是執行在本條例下的職能時，真誠地作出或沒有作出任何作為，則該指明人士不會因該作為或不作為，而須在民事法律程序中負上法律責任。
- (2) 就誹謗法而言，如指明人士——
 - (a) 在任何書面或其他形式的通訊、報告或陳述中；並
 - (b) 為執行他在本條例下的職能，
 而就某投訴作出任何評論或發表任何事宜，則該項評論或發表享有絕對特權。

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,

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(3) 第(1)或(2)款給予的保障，並不適用於第 39 條中**指明人士**的定義的(d)段所指的指明人士。

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.

第 6 部

Part 6

過渡及保留條文

Transitional and Savings Provisions

42. 第 6 部的釋義

在本部中——

* **生效日期** (commencement date) 指本條例的生效日期；

前警監會 (former Council) 指在緊接生效日期前存在的投訴警方獨立監察委員會；

前觀察員 (former observer) 指屬在緊接生效日期前存在的名為“投訴警方獨立監察委員會觀察員計劃”的計劃下的觀察員的人。

編輯附註：

* 生效日期：2009 年 6 月 1 日。

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.

Editorial Note:

* Commencement date: 1 June 2009.

43. 前警監會作出的事情的延續

(1) 本條例的制定，不影響在生效日期 * 前由前警監會作出，或就它或代它作出的任何事情的有效性。

(2) 在生效日期前依據前警監會的職能或在與該職能有關連的情況下，由前警監會作出或就它或代它作出的任何事情，自該日期起，須在猶如該事情是由監警會作出或就它或代它作出一樣的情況下，具有效力。

(3) 在緊接生效日期前依據前警監會的職能或在與該職能有關連的情況下，而正由前警監會或正就它或代它作出任何事情，自該日期起，在符合本條例的範圍內，可由監警會繼續作出或就它或代它繼續作出。

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

編輯附註：

* 生效日期：2009 年 6 月 1 日。

44. 已有的法律申索

在不限制第 43 條的原則下，凡有符合以下說明的法律申索（包括任何司法及行政程序）——

- (a) 由前警監會提出或針對前警監會而提出的；並且
 - (b) 在緊接生效日期 * 前存在的，
- 則該法律申索並不因本條例生效而中止。

編輯附註：

* 生效日期：2009 年 6 月 1 日。

45. 委任的延續

- (1) 在符合第 (2) 款的規定下，任何人如在緊接生效日期 * 前——
 - (a) 擔任前警監會主席、副主席或任何其他成員的職位；或
 - (b) 擔任前觀察員，
 自該日期起，即繼續擔任監警會主席、副主席、該其他成員或觀察員（視屬何情況而定），猶如他是根據本條例獲委任一樣。
- (2) 第 (1) 款所指的人繼續擔任有關職位的時間，僅為在他先前的委任下的剩餘任期，但該人有資格根據附表 1 第 1(b) 或 2(b) 條或附表 2 第 1(b) 條（視屬何情況而定）再獲委任。
- (3) 如任何人在緊接生效日期前是前警監會的秘書或法律顧問，則該人自該日期起，按在緊接該日期前適用於該人的相同條款及條件，繼續擔任監警會的秘書長或法律顧問。

to or on behalf of the Council to the extent that it is consistent with this Ordinance.

Editorial Note:

* Commencement date: 1 June 2009.

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.

Editorial Note:

* Commencement date: 1 June 2009.

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).

問(視屬何情況而定),直至有秘書長或法律顧問(視屬何情況而定)根據第 6(1)條獲委任為止。

(4) 如任何人在緊接生效日期前是前警監會的人員(秘書及法律顧問除外),則該人自該日期起,按在緊接該日期前適用於該人的相同條款及條件,繼續擔任監警會的人員,直至監警會與政府議定的時間為止。

編輯附註:

* 生效日期: 2009 年 6 月 1 日。

(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.

Editorial Note:

* Commencement date: 1 June 2009.

46. 呈交予前警監會的列表

就以下列表而言——

- (a) 根據第 9(1)(a) 條呈交的首份須匯報投訴列表; 或
- (b) 根據第 9(1)(b) 條呈交的首份須知會投訴列表, 在生效日期*前由處長向前警監會呈交, 並且載有相應資料的上一份列表, 須——
- (c) 就第 9(2) 條而言視為上一份須匯報投訴列表; 或
- (d) 就第 9(3) 條而言視為上一份須知會投訴列表, 視何者適用而定。

編輯附註:

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),

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第 604 章

第 6 部

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Part 6

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* 生效日期：2009 年 6 月 1 日。

as may be applicable.

Editorial Note:

* Commencement date: 1 June 2009.

第 7 部

Part 7

(已失時效而略去——2019 年第 3 號編輯修訂紀錄)

(Omitted as spent—E.R. 3 of 2019)

47-48. (已失時效而略去——2019 年第 3 號編輯修訂紀錄)

47-48. (Omitted as spent—E.R. 3 of 2019)

附表 1

[第 3、7 及 45 條]

Schedule 1

[ss. 3, 7 & 45]

關於監警會成員、監警會的處事程序、委員會、財務事宜及監警會簽立文件，以及監警會其他雜項事宜的條文

Provisions with respect to Members, Proceedings, Committees and Finances of, and Execution of Documents by, and Other Miscellaneous Matters of, Council

監警會成員

Members of Council

1. 主席的任期

主席 (根據第 5 條獲委任的人除外) ——

- (a) 的委任任期不得超過 3 年；並
- (b) 有資格再獲委任一段或多於一段任期，但再獲委任的每段任期均不得超過 3 年。

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. 副主席及委任成員的任期

副主席或委任成員 (根據第 5 條獲委任的人除外) ——

- (a) 的委任任期不得超過 2 年；並
- (b) 有資格再獲委任一段或多於一段任期，但再獲委任的每段任期均不得超過 2 年。

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. 主席、副主席及委任成員的辭職

- (1) 主席、副主席或委任成員可藉給予行政長官書面通知，辭去職位。
- (2) 第 (1) 款所指的辭職，在行政長官接獲有關通知的日期當日或該通知指明的日期 (兩者以較後者為準) 生效。

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.

4. 主席、副主席及委任成員的免任
行政長官如信納主席、某副主席或委任成員因永久喪失行為能力或其他充分自由，而不能夠或不適合執行其職能，則行政長官可藉書面通知將主席、該副主席或委任成員（視屬何情況而定）免任。

5. 署理委任
行政長官可在以下情況下，委任任何人署任主席、副主席或委任成員——

- (a) 主席、有關副主席或委任成員（視屬何情況而定）因疾病、不在香港或其他自由而不能執行其職能；或
- (b) 主席、有關副主席或委任成員（視屬何情況而定）的職位懸空，有待新的委任或再度委任。

6. 向主席、副主席及委任成員支付費用及津貼
監警會可向主席、副主席及委任成員支付行政長官所決定的費用及津貼。

監警會簽立文件

7. 監警會的印章及文件
(1) 監警會須有法團印章。

- (2) 法團印章在有監督會決議的授權下，方可蓋在文件上。
- (3) 以法團印章蓋印，須由獲監督會授權（不論是為此而作出一般授權或特別授權）的任何 2 名監督會成員簽署認證。
- (4) 如任何文件看來是加蓋法團印章而妥為簽立的，則除非相反證明成立，否則該文件須視為妥為簽立。
- (5) 如任何合約或文書在由自然人訂立或簽立的情況下，是無須加蓋印章以訂立或簽立的，則該合約或文書可由獲監督會為此而作出一般授權或特別授權的監督會任何成員、秘書長、法律顧問或監督會任何其他僱員，代監督會訂立或簽立。

- (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.

監督會的處事程序

Proceedings of Council

8. 監督會會議

8. Council meetings

- (1) 監督會須為執行其職能的目的，舉行所需次數的會議。
- (2) 主席可指定監督會會議舉行的時間及地點。
- (3) 監督會可藉根據第 16 條決定的它的程序，就由一名副主席在主席缺席時指定監督會會議的舉行時間及地點，訂定條文。

- (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. 監督會會議的法定人數

9. Quorum for Council meetings

監督會會議的法定人數為 6 名監督會成員。

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

10. 主席主持監督會會議

- (1) 主席必須主持監督會會議。
- (2) 如主席缺席或不主持會議，則會議必須由出席的委任成員選出的一名副主席主持。
- (3) 如主席及 3 名副主席均不能主持會議，則會議必須由從出席的委任成員之中選出的一名委任成員主持。

11. 在監督會會議上決定事宜

- (1) 任何有待在監督會會議上決定的事宜，必須由出席會議和就該事宜投票的監督會成員，以過半數票決定。
- (2) 如票數相等，則主持有關會議的人除本身原有的一票外，有權投決定票。
- (3) 除第(5)款另有規定外，任何可在監督會會議上作出的事情，可藉向監督會所有成員傳閱文件的方式作出，而無需舉行會議。
- (4) 除第(5)款另有規定外，任何書面決議如已獲監督會所有成員中過半數成員批准，則該書面決議的效力及作用，與猶如該決議已在監督會會議上由如此批准該決議的成員投票通過一樣。
- (5) 如監督會任何成員藉致予秘書長的書面通知，要求在監督會會議上，決定根據第(3)款傳閱的文件提述的某事宜，則該事宜必須如此決定。
- (6) 為免生疑問，在本條中凡提述傳閱文件之處，均包括藉電子方法傳閱資料，而在本條中凡提述文件之處，必須據此理解。

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. 披露於須匯報投訴及須知會投訴中的利害關係

- (1) 如某須匯報投訴或某須知會投訴在或將會在監警會會議上討論，而監警會某成員於該投訴中，有利害關係（不論屬直接或間接），該成員——
- (a) 必須在會議上或會議前，披露其利害關係的性質；
 - (b) 在會議討論該投訴期間，必須避席；
 - (c) 不得就關於該投訴的決議投票；及
 - (d) 不得被計算在該會議的法定人數內。
- (2) 凡有關披露是由主持會議的成員作出，則該成員在討論有關投訴期間，不得主持該會議。
- (3) 當有成員根據第(2)款而不主持會議時，出席會議的其他成員，必須藉過半數票而委任他們當中的一人，在上述成員不主持會議的期間，主持會議。
- (4) 在本條中，凡提述須匯報投訴或須知會投訴，均包括任何與該投訴有關的事宜。

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. 於不屬須匯報投訴及須知會投訴的事宜中披露利害關係

- (1) 如或在將會在監警會會議上討論的某事宜（該事宜）（既非須匯報投訴（包括有關事宜），亦非須知會投訴（包括有關事宜），而監警會某成員於該事宜中，有利害關係（不論屬直接或間接），則該成員——

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

- (a) 必須在會議上或會議前，披露其利害關係的性質；
- (b) (如過半數出席會議的其他成員作此要求) 在會議討論該事宜期間，必須避席；及
- (c) 不得——
 - (i) 就關於該事宜的決議投票；或
 - (ii) 被計算在該會議的法定人數內，
 但如過半數出席會議的其他成員另作決定，則屬例外。
- (2) 凡有關披露是由主持會議的成員作出，如過半數出席會議的其他成員作此要求，則該成員在討論該事宜期間，不得主持該會議。
- (3) 凡有成員根據第(2)款被要求不主持會議，則出席會議的其他成員，必須藉過半數票而委任他們當中的一人，在上述成員不主持會議的期間，主持會議。

- 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. 在書面決議的情況下披露利害關係

凡某事宜藉書面決議議決，而監督會某成員於該事宜中，有利害關係（不論屬直接或間接）——

- (a) 該成員——
 - (i) 必須在傳閱的文件中，述明其利害關係的性質；及
 - (ii) 必須將如此述明其利害關係的文件，交回秘書長；及

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) 該成員——

- (i) 不得就該書面決議投票；及
- (ii) 在為批准書面決議的目的而計算過半數票時，不得被計算在內。

(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. 披露利害關係須予記錄

監警會必須記錄根據第 12(1)(a)、13(1)(a) 或 14(a) 條作出的披露。

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. 監警會可決定本身的程序

在本條例其他條文的規限下，監警會可決定本身的程序。

16. Council may determine its own procedure

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

監警會的委員會

Committees of Council

17. 設立委員會

監警會可設立從其成員之中組成的委員會、專責委員會或小組，以協助監警會執行它在本條例下的任何職能。

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. 委員會主席

- (1) 委員會主席必須從該委員會成員之中選出。
- (2) 委員會主席必須主持委員會的任何會議。
- (3) 如委員會主席缺席或不主持會議，則會議必須由從出席的委員會成員之中選出的一名委員會成員主持。

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. 在委員會會議上決定事宜

19. Determination of matters at committee meetings

- (1) 任何有待在委員會會議上決定的事宜，必須由出席會議和就該事宜投票的委員會成員，以過半數票決定。
- (2) 如票數相等，則主持有關會議的人除本身原有的一票外，有權投決定票。
- (3) 除第(5)款另有規定外，任何可在委員會會議上作出的事情，可藉向委員會所有成員傳閱文件的方式作出，而無須舉行會議。
- (4) 除第(5)款另有規定外，任何書面決議如已獲委員會所有成員中過半數成員批准，則該書面決議的效力及作用，與猶如該決議已在委員會會議上由如此批准該決議的成員投票通過一樣。
- (5) 如委員會任何成員藉致予秘書長的書面通知，要求在委員會會議上，決定根據第(3)款傳閱的文件提述的某事宜，則該事宜必須如此決定。
- (6) 為免疑問，在本條中凡提述傳閱文件之處，均包括藉電子方法傳閱資料，而在本條中凡提述文件之處，必須據此理解。

- (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. 披露於須匯報投訴及須知會投訴中的利害關係

- (1) 如某須匯報投訴或某須知會投訴在或將會在委員會會議上討論，而委員會某成員於該投訴中，有利害關係（不論屬直接或間接），該成員——
 - (a) 必須在會議上或會議前，披露其利害關係的性質；
 - (b) 在會議討論該投訴期間，必須避席；
 - (c) 不得就關於該投訴的決議投票；及
 - (d) 不得被計算在該會議的法定人數內。
- (2) 凡有關披露是由主持會議的成員作出，則該成員在討論有關投訴期間，不得主持該會議。

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;

- (3) 當有成員根據第 (2) 款而不主持會議時，出席會議的其他成員，必須藉過半數票而委任他們當中的一人，在上述成員不主持會議的期間，主持會議。
- (4) 在本條中，凡提述須匯報投訴或須知會投訴，均包括任何與該投訴有關的事宜。

- (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. 於不屬須匯報投訴及須知會投訴的事宜中披露利害關係

- (1) 如或在將會在委員會會議上討論的或某事宜 (該事宜) (既非須匯報投訴 (包括有關事宜)，亦非須知會投訴 (包括有關事宜))，而委員會某成員於該事宜中，有利害關係 (不論屬直接或間接)，則該成員——
 - (a) 必須在會議上或會議前，披露其利害關係的性質；
 - (b) (如過半數出席會議的其他成員作此要求) 在會議討論該事宜期間，必須避席；及
 - (c) 不得——
 - (i) 就關於該事宜的決議投票；或
 - (ii) 被計算在該會議的法定人數內，
 但如過半數出席會議的其他成員另作決定，則屬例外。

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—

- (2) 凡有關披露是由主持會議的成員作出，如過半數出席會議的其他成員作此要求，則該成員在討論該事宜期間，不得主持該會議。
- (3) 凡有成員根據第(2)款被要求不主持會議，則出席會議的其他成員，必須藉過半數票而委任他們當中的一人，在上述成員不主持會議的期間，主持會議。

- (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. 在書面決議的情況下披露利害關係

凡某事宜藉書面決議，而委員會某成員於該事宜中，有利害關係（不論屬直接或間接）——

- (a) 該成員——
 - (i) 必須在傳閱的文件中，述明其利害關係的性質；及
 - (ii) 必須將如此述明其利害關係的文件，交回秘書長；及
- (b) 該成員——
 - (i) 不得就該書面決議投票；及
 - (ii) 在為批准書面決議的目的而計算過半數票時，不得被計算在內。

23. 披露利害關係須予記錄

委員會必須記錄根據第 20(1)(a)、21(1)(a) 或 22(a) 條作出的披露。

24. 委員會可決定本身的程序

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

在本條例其他條文的規限下，每一委員會均可決定本身的程序。

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

監警會的財務事宜

Finances of Council

25. 監警會的資源

25. Resources of Council

監警會的資源由以下各項組成——

The resources of the Council consist of—

- (a) 由政府付予監警會並獲立法會為該目的撥出的所有款項；及
- (b) 所有其他款項及財產，包括監警會所收的費用、饋贈、捐贈、利息及累積的收益。

- (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. 資金的投資

26. Investment of funds

- (1) 在符合第(2)款的規定下，監警會可將非即時需支用的款項作投資。
- (2) 除非監警會以財政司司長批准的方式將款項作投資，否則投資不得作出。

- (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. 財政年度

27. Financial year

監警會的財政年度是指——

The financial year of the Council is—

- (a) 於本條例的生效日期*開始而於隨後一年的3月31日完結的期間；及
- (b) 於其後每年至3月31日完結的12個月期間。

- (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.

編輯附註：

* 生效日期：2009年6月1日。

Editorial Note:

* Commencement date: 1 June 2009.

28. 監警會須備存妥善的帳目

28. Council to keep proper accounts

- (1) 監警會必須就其財務往來，備存妥善的帳目。
- (2) 監警會必須在其任何財政年度完結後，在切實可行範圍內，盡快擬備——
 - (a) 一份該財政年度的帳目報表，其中須載有收支結算表及現金流轉表；及
 - (b) 一份顯示在該財政年度完結時監警會財務狀況的資產負債表。

29. 審計帳目報表

- (1) 監警會必須委任一名根據《專業會計師條例》(第 50 章)註冊，並持有該條例所指的執業證書的人，擔任它的核數師。
- (2) 有關核數師必須在監警會的任何財政年度完結後，在切實可行範圍內，盡快——
 - (a) 審計監警會為該財政年度擬備的帳目及帳目報表；及
 - (b) 就該帳目報表向監警會呈交報告。

30. 監警會的年報

- (1) 監警會必須在其任何財政年度完結後，在切實可行範圍內盡快，並無論如何須在 6 個月內，或在行政長官容許的較長限期（須在有關情況下屬合理者）內，向行政長官呈交——
 - (a) 關於監警會在該財政年度根據本條例執行其職能的報告；
 - (b) 監警會為該財政年度而擬備的帳目報表的文本；及

- (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;

- (c) 有關核數師根據第 29(2) 條就監警會擬備的帳目報表而向監警會呈交的報告的文本。
- (2) 監警會必須在接獲行政長官對它向立法會提交第 (1) 款所述的文件的批准後，安排在切實可行範圍內，盡快將該等文件提交立法會會議省覽。

- (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. 審計署署長的審核

- (1) 審計署署長可就監警會的任何財政年度，對監警會在執行其職能時使用其資源是否合乎經濟原則及講求效率及效驗的情況，進行審核。
- (2) 審計署署長——
 - (a) 有權在所有合理時間，取覽他為根據本條進行審核的目的而合理地要求的由監警會保管或控制的所有紀錄、簿冊、憑單、文件、現金、收據、印花、證券、物料及任何其他財產；及
 - (b) 有權向持有該等文件或材料的人，或向須為該等文件或材料負責的人，要求提供他認為為上述目的而合理地需要的資料及解釋。
- (3) 審計署署長可向立法會主席報告他根據本條進行的審核的結果。
- (4) 第 (1) 款並不使審計署署長有權質疑監警會的政策目標是否可取。

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

雜項事宜

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.

32. 轉授職能
- (1) 監督會可用書面形式，將它在本條例下的任何職能轉授予某委員會、某監督會成員、秘書長、法律顧問或監督會任何其他僱員，但第(6)款所指明的職能不得如此轉授。
 - (2) 本條所指的轉授可屬一般轉授或有限制的轉授，並可受條件規限。
 - (3) 監督會可在任何時間修訂或撤銷根據本條作出的轉授。
 - (4) 根據本條獲監督會轉授職能的人，在沒有相反證據的情況下，須推定為按照有關轉授的條款行事。
 - (5) 儘管轉授經已作出，已轉授的職能仍可由監督會執行。
 - (6) 第(1)款所指的監督會不可轉授的職能是——
 - (a) 根據該款作出轉授的權力；
 - (b) 根據第 30(1)條向行政長官呈交年報、帳目報表及核數師報告的責任；及
 - (c) 根據本條例第 30 條向行政長官作出報告的權力。

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

33. 豁免徵稅
- 監督會獲豁免而無須繳交《稅務條例》(第 112 章)下的徵稅。

附表 2

Schedule 2

[第 35 及 45 條]

[ss. 35 & 45]

關於觀察員的條文

Provisions with respect to Observers

1. 觀察員的任期 觀察員——

1. Term of office of observers An observer—

- (a) 的委任任期不得超過 2 年；並
- (b) 有資格再獲委任一段或多於一段任期，但再獲委任的每段任期均不得超過 2 年。

- (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. 觀察員的辭職

2. Resignation of observers

- (1) 觀察員可藉給予保安局局長書面通知，辭去職位。
- (2) 第 (1) 款所指的辭職，在保安局局長接獲有關通知的日期當日或該通知指明的日期（兩者以較後者為準）生效。

- (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. 觀察員的免任

保安局局長如信納某觀察員因永久喪失行為能力或其他充分因由，而不能夠或不適合執行其職能，可藉書面通知將該觀察員免任。

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. 向觀察員支付費用及津貼

監督會可向觀察員支付保安局局長所批准的費用及津貼。

4. Fees and allowances to observers

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

