

**PREVENTION OF BRIBERY ORDINANCE 1970.**

**ARRANGEMENT OF SECTIONS.**

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**HONG KONG**

No. 102 OF 1970.

L.S.

I assent.

D. C. C. TRENCH,  
Governor.

17th December, 1970.

An Ordinance to make further and better provision for the prevention of bribery and for purposes necessary thereto or connected therewith.

[ 14<sup>th</sup> May, 1971. ]

" Ordinance not disallowed — see G.N. 406/71. L.N. 88/71.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

**PART I.**

**PRELIMINARY.**

1. This Ordinance may be cited as the Prevention of Bribery Ordinance 1970, and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation.

"advantage" means—

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e);

“agent” includes a public servant and any person employed by or acting for another;

“banker’s books” means—

(a) any ledger, day book, cash book, account book or other book whatsoever, and

(b) any computer records,

used in the ordinary business of a bank;

“child” includes a child who is illegitimate or adopted, a foster child and a step-child;

“company books” means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book or other book used in the ordinary business of a company;

“court” includes a magistrate hearing proceedings with a view to committal for trial under section 85 of the Magistrates Ordinance;

(Cap. 227.)

“Crown servant” means a person holding an office of emolument, whether permanent or temporary, under the Crown in right of the Government;

“Director” means the person appointed by the Governor to be in charge of the Anti-Corruption Office;

“entertainment” means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions;

“parents” includes parents-in-law and step-parents;

“principal” includes—

(a) an employer;

(b) a beneficiary under a trust;

(c) a trust estate as though it were a person;

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

“public body” means—

- (a) the Government;
- (b) the Executive Council;
- (c) the Legislative Council;
- (d) the Urban Council;
- (e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Governor or the Governor in Council; and
- (f) any board, commission, committee or other body specified in the Schedule;

Schedule.

“public servant” means any employee or member of a public body, whether temporary or permanent and whether paid or unpaid, but the holding of a share in a company which is a public body shall not of itself constitute the holder a public servant;

“spouse” includes a concubine.

(2) For the purposes of this Ordinance—

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and
- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

## PART II.

## OFFENCES.

Soliciting or accepting an advantage.

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

Bribery.

**4.** (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's—

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

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

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

shall be guilty of an offence.

Bribery for giving assistance, etc. in regard to contracts.

**5.** (1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution, or procuring of—
  - (i) any contract with a public body for the performance of any work, the providing of any service, the doing

of any thing or the supplying of any article, material or substance, or

- (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

- (a) the promotion, execution or procuring of, or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.

6. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.

Bribery for  
procuring  
withdrawal  
of tenders.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

7. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Bribery in  
relation to  
auctions.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to

or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Bribery of public servants by persons having dealings with public bodies.

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

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

Corrupt transactions with agents.

**9.** (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's—

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document—

- (a) in respect of which the principal is interested; and
- (b) which contains any statement which is false or erroneous or defective in any material particular; and
- (c) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.



(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting or accepting of any advantage by his agent shall, without prejudice to the generality of the defence of lawful authority or reasonable excuse, constitute a reasonable excuse.

10. (1) Any person who, being or having been a Crown servant—  
(a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or  
(b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence.

Possession of unexplained property.

(2) No prosecution for an offence under subsection (1) shall be instituted without the consent in writing of the Attorney General, who shall, before consenting to the institution of a prosecution against a person for such an offence, inform that person that a prosecution against him for such an offence is under consideration and give him an opportunity of making representations in writing to the Attorney General.

(3) Neither section 7 of the Legal Officers Ordinance nor section 43 of the Interpretation and General Clauses Ordinance shall apply to or in respect of this section.

(Cap. 87.)  
(Cap. 1.)

(4) Any representations in writing made by a person to the Attorney General under subsection (2) shall not, without the consent of that person, be admissible in evidence in any proceedings against him for any offence.

(5) In this section, "official emoluments" includes a pension or gratuity payable under the Pensions Ordinance.

(Cap. 89.)

11. (1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Penalty for offences.

**12.** (1) Any person guilty of an offence under this Part, other than an offence under section 3, shall be liable—

(a) on conviction on indictment—

(i) for an offence under section 5 or 6, to a fine of one hundred thousand dollars and to imprisonment for ten years, and

(ii) for any other offence under this Part, to a fine of one hundred thousand dollars and to imprisonment for seven years; and

(b) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for three years,

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

(2) Any person guilty of an offence under section 3 shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

### PART III.

#### POWERS OF INVESTIGATION.

Special powers of investigation.

**13.** (1) The Attorney General, if satisfied that there are reasonable grounds for suspecting that an offence under this Ordinance has been committed by any person, may, for the purposes of an investigation into such offence, authorize in writing any police officer of or above the rank of senior inspector or any Crown servant specified in such authorization, to exercise the following powers on the production by him of the authorization—

(a) to investigate and inspect any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of what-

soever kind or description, any safe-deposit box, and any banker's books or company books, of or relating to any person named or otherwise identified in such authorization;

(b) to require from any person the production of any accounts, books, documents, safe-deposit box or other article of or relating to any person named or otherwise identified in such authorization which may be required for the purpose of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or of any relevant entry therein.

(2) (a) Every authorization given under subsection (1) shall be deemed also to authorize the police officer or Crown servant specified therein to require from any person information as to whether or not at any bank, company or other place there is any account, book, document, safe-deposit box or other article liable to investigation, inspection or production under such authorization.

(b) A requirement under paragraph (a) shall be made in writing and any statement therein as to the existence of the appropriate authorization under subsection (1) shall be accepted as true without further proof of the fact.

(3) Any person who, having been lawfully required under this section to disclose any information or to produce any accounts, books, documents, safe-deposit box or other article to a police officer or a Crown servant authorized under subsection (1), shall, notwithstanding the provisions of any other law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance, comply with such requirement, and any such person who fails or neglects, without reasonable excuse, so to do, and any person who obstructs any such police officer or Crown servant in the execution of the authorization given under subsection (1), shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

(Cap 112.)

(4) Any person who falsely represents that an appropriate authorization has been given under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

14. (1) In the course of any investigation into, or proceedings relating to, an offence alleged or suspected to have been committed

Power to obtain information.

by any person under this Ordinance, the Attorney General may by written notice require—

(a) such person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing, enumerating—

(i) the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the year immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and, where it was acquired by purchase, specifying the consideration paid therefor; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise, at any time during the year immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefor;

(ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than one year from the date of the notice);

(iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than one year from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

(b) such person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a statement in writing of any money or other property sent out of the Colony by him or on his behalf during such period as may be specified in the notice;

(c) any other person to furnish to the Director a statutory declaration or, as the Attorney General sees fit, a state-

ment in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him, if the Attorney General believes that such information may assist the investigation or proceedings;

- (d) any other person whom the Attorney General believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to the Director all information in his possession respecting such matters as are specified in the notice or, as the Attorney General sees fit, to appear before the Director or such other person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by the Director or such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control which, in the opinion of the Director or such other person, may be relevant to such investigation or proceedings; for the purposes of this paragraph the Director or such other person shall have authority to administer any oath or take any affirmation;
- (e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to the Director any document or a copy, certified by the person in charge, of any document which is in his possession or under his control;
- (f) the manager of any bank to give to the Director copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by paragraph (d) of subsection (1) include the power to require information from, and to require the attendance for the purpose of answering questions of—

- (a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and
- (b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction.

as to any of the following matters, that is to say—

- (i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;
- (ii) any consideration, brokerage, commission or fee paid or received in respect of or in connexion with any such land or property transaction; and
- (iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by registered post addressed to his last known place of business or residence.

(4) Every person on whom a notice under subsection (1) is served shall, notwithstanding the provisions of any other law to the contrary save only the provisions of section 4 of the Inland Revenue Ordinance, comply with the terms of that notice within such time as may be specified therein or within such further time as the Attorney General may, in his discretion, authorize, and any person on whom such a notice has been served, other than the person referred to in paragraphs (a) and (b) of subsection (1), who, without reasonable excuse, neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

(Cap. 112.)

Legal advisers  
and privileged  
information.

**15.** (1) Save as is provided in this section, nothing in this Ordinance shall require the disclosure by a legal adviser of any privileged information, communication, book, document or other article.

(2) Subject to subsection (4), the information referred to in subsection (2) of section 13 and in subsection (2) of section 14 may be required from a legal adviser as from any other person, notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(3) Subject to subsection (4), a legal adviser may be required by notice under paragraph (d) of subsection (1) of section 14—

- (a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connexion with—

- (i) the transfer by such person of any moneys out of the Colony; or

- (ii) the investment by such a person within or outside the Colony of any moneys; and
- (b) if so, to furnish information in his possession with respect thereto, being information as to—
- (i) the date of the transfer or investment;
  - (ii) the amount of the transfer or investment;
  - (iii) in the case of a transfer, the name and address of the bank and the name and number (if any) of the account to which the money was transferred;
  - (iv) in the case of an investment, the nature of the investment,

notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(4) Nothing in subsection (2) or (3) shall require a legal adviser to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, begun or in contemplation, before a court or to enable him to give legal advice to his client.

(5) In this section "legal adviser" means counsel or a solicitor.

(6) The protection conferred by this section on a legal adviser shall extend to a clerk or servant of or employed by a legal adviser.

16. (1) Any police officer of or above the rank of senior inspector and any Crown servant conducting an investigation into an offence alleged or suspected to have been committed under this Ordinance—

Powers of search, and to obtain assistance.

- (a) may apply to any Crown servant or any other person for assistance in the exercise of his powers or the discharge of his duties under this Ordinance;
- (b) may for the purposes of such investigation, with the written consent of the Attorney General and with such assistance as may be necessary, enter and search any office, registry or other room of or used by a public body:

Provided that the Governor may by order exempt any office, registry or room from entry and search under the provisions of this paragraph.

- (2) Any person who—
- (a) when requested under paragraph (a) of subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance; or
- (b) obstructs or resists any police officer or Crown servant in the exercise of the powers of entry and search conferred by paragraph (b) of subsection (1),

shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Further powers of search and seizure.

17. (1) If it appears to the Attorney General, or to the Director, that there is reasonable cause to believe that in any place other than an office, registry or other room of or used by a public body there is any document or thing containing any evidence of the commission of an offence under this Ordinance, the Attorney General or the Director may, by warrant directed to any police officer, empower such police officer to enter such place, by force if necessary, and there to search for, seize and detain any such document or thing.

(2) Without prejudice to any other law relating to entry and search, the chambers of counsel or the office of a solicitor are not subject to entry and search under this section or any warrant issued under this section except in the course of investigating an offence under this Ordinance alleged or suspected to have been committed by that counsel or that solicitor, as the case may be, or by his clerk or any servant employed by him in such chambers or office.

(3) Any person who obstructs or resists the Director or any police officer in the exercise of the powers of entry and search under this section shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Bail from persons about to leave Hong Kong after commencement of investigations.

18. (1) If, in the course of an investigation of an offence alleged or suspected to have been committed by any person under this Ordinance, it appears to the Director that such person is preparing or about to leave Hong Kong, the Director, or any gazetted police officer or Crown servant authorized in that behalf by the Director, may apply to a magistrate for a warrant for the apprehension of such person and his production before a magistrate; and where, on any such application, it is made to appear to the magistrate upon the oath of any person that there is reasonable cause to believe that the person whose apprehension is sought is preparing or about to leave Hong Kong and that,



in all the circumstances, the investigation could not reasonably have been completed before the date of the application, he may issue a warrant to apprehend such person and to cause him to be brought before a magistrate as soon after apprehension as is practicable to be dealt with according to subsection (3).

(2) The provisions with reference to the forms of warrants of apprehension, the directions to be contained therein and the execution thereof contained in the Magistrates Ordinance shall apply, *mutatis mutandis*, to warrants issued under subsection (1).

(Cap. 227.)

(3) On the production before a magistrate of any person apprehended pursuant to a warrant issued under subsection (1), the magistrate shall, unless the person apprehended can satisfy the magistrate that he is not preparing or about to leave the Colony and that he has no intention of leaving the Colony, offer to admit him to bail, on his procuring or producing such surety or sureties as, in the opinion of the magistrate, will be sufficient to ensure his appearance on such day and at such time and place as the magistrate decides and, thereafter, on such subsequent day, and at such time and place on that day, as may from time to time on his appearing be decided by a magistrate; and thereupon the magistrate shall take the recognizance of such person and his surety or sureties conditioned for the appearance of such person on such day and at such time and place as that magistrate shall have decided and, thereafter, on such subsequent day, and at such time and place on that day, as may be decided from time to time on his appearing before a magistrate, and that he will then surrender and not depart without leave of a magistrate.

(4) In deciding the day on which a person admitted to bail under subsection (3) is to appear or to appear again, regard shall be had by the magistrate to the time reasonably necessary for completion of the investigation of the offence alleged or suspected to have been committed by such person and to any special hardship to such person likely to result from his being on bail, but the person shall not be required to appear or to appear again on a day later than twenty-eight days from the date of his apprehension pursuant to the warrant issued under subsection (1) unless the magistrate is of the opinion that, having regard to the gravity of the offence alleged or suspected to have been committed by such person, it is expedient to fix a later date.

(5) If any person offered bail under this section refuses to enter into the recognizance required or makes default in finding any surety or sureties as may be required, the magistrate shall, by warrant, commit him to prison there to be safely kept—

(a) until he enters into such recognizance or finds such surety or sureties, as the case may be; or

- (b) until the expiry of the period of twenty-eight days from the date of his committal to prison as aforesaid; or
- (c) until a magistrate, by order in that behalf, orders and directs the Commissioner of Prisons to discharge such person from prison (which order shall be sufficient warrant for the Commissioner of Prisons so to do),

whichever occurs first.

(6) The provisions of section 62 (power to reduce or vary security), section 63 (recognizance taken out of court), section 64 (mode of giving security and enforcement thereof) and section 65 (enforcing recognizance for appearance) of the Magistrates Ordinance shall apply, *mutatis mutandis*, to recognizances under this section.

(Cap. 227.)

(7) Proceedings before a magistrate under this section shall be deemed to be a proceeding which a magistrate has power to determine in a summary way within the meaning of section 105 and subsection (3) of section 113 of the Magistrates Ordinance, and, accordingly, the provisions of Part VII of that Ordinance (which relate to appeals) shall apply, *mutatis mutandis*, to appeals against an order or determination of a magistrate under this section.

(Cap. 227.)

(8) All proceedings before a magistrate under this section shall be conducted in chambers.

## PART IV.

### EVIDENCE.

Custom not to be a defence.

**19.** In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Admissibility of accused's declarations and statements.

**20.** In any proceedings against a person for an offence under this Ordinance—

- (a) any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served upon him under paragraph (a) or (b) of subsection (1) of section 14 shall be admissible in evidence and, if such person tenders himself as a witness, any such declaration or statement may be used in cross-examination and for the purpose of impeaching his credit;

(b) the fact of his failure in any respect to comply with the terms of a notice served on him under paragraph (a) or (b) of subsection (1) of section 14 may be adduced in evidence and made the subject of comment by the court and the prosecution.

21. (1) In any proceedings against a person for an offence under Part II (other than section 10), the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court—

Evidence of pecuniary resources or property.

- (a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and
- (b) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of subsection (1) a person accused of an offence under Part II (other than section 10) shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

22. Notwithstanding any rule of law or practice to the contrary, no witness shall, in any proceedings for an offence under Part II, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of any payment or delivery of any advantage by or on behalf of the person accused to him.

Person giving or receiving bribe not to be regarded as an accomplice.

23. In or for the purpose of any proceedings for an offence under Part II, the court may, at the request in writing of the Attorney General, inform any person accused or suspected of such offence or of any other offence under Part II that, if he gives full and true evidence in such proceedings and, where such proceedings are proceedings held with a view to committal for

Power to secure evidence of parties to offences.

(Cap. 227.)

trial under section 85 of the Magistrates Ordinance, in the trial before the Supreme Court of all things as to which he is lawfully examined, he will not be prosecuted for any offence disclosed by his evidence; and upon such person giving evidence in any such proceedings no prosecution against him for any offence disclosed by his evidence therein shall be instituted or carried on unless the court before which he gives evidence considers that he has wilfully withheld evidence or given false testimony and so certifies to the Attorney General in writing.

Burden of proof.

**24.** In any proceedings against a person for an offence under this Ordinance, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

Presumption of corruption in certain cases.

**25.** Where, in any proceedings for an offence under section 4 or 5, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given and accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

Comment on failure of accused to give evidence.

**26.** Notwithstanding any law or practice to the contrary, it shall be lawful for the court in any proceedings for an offence under Part II to comment on the failure of the accused to give evidence on oath.

## PART V.

### MISCELLANEOUS.

Frivolous, false or groundless complaints to be reported to the Attorney General.

**27.** At the conclusion of proceedings for an offence under this Ordinance, the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Attorney General.

Costs on acquittal.

**28.** Where a person is acquitted after trial before the Supreme Court or the District Court for an offence under Part II, the court may award costs to that person, such costs to be taxed and paid out of the general revenue.

Offence of making a false report of the commission of offence, etc.

**29.** Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Ordinance, knowingly—

(a) makes or causes to be made a false report of the commission of an offence under this Ordinance to—

(i) any police officer specified in an authorization given under section 13; or

(ii) any Crown servant specified in an authorization given under section 13; or

(b) misleads—

(i) any police officer specified in an authorization given under section 13; or

(ii) any Crown servant specified in an authorization given under section 13,

shall be guilty of an offence and shall be liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year.

30. Any person who, without lawful authority or reasonable excuse, discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance the fact that he is subject to such an investigation or any details of such investigation, or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation, shall be guilty of an offence and shall be liable on conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Offence to disclose identity, etc. of persons being investigated.

31. (1) No prosecution for an offence under Part II shall be instituted except with the consent of the Attorney General.

Consent of Attorney General required for prosecution of offences under Part II.

(2) Notwithstanding subsection (1) of this section a person may be charged with an offence under Part II (other than an offence under section 10) and may be arrested therefor, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no such person shall be remanded in custody or on bail for longer than three days on such charge unless in the meantime the consent of the Attorney General aforesaid has been obtained.

(3) When a person is brought before a magistrate before the Attorney General has consented to the prosecution, the charge shall be explained to the person accused but he shall not be called upon to plead and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

32. (1) If, on the trial of any person for any offence under Part II, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part II, the accused may, notwithstanding the

Alternative convictions, and amending particulars.

absence of consent under section 10 or 31 in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If on the trial of any person for any offence under Part II there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of consent under section 10 or 31 in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

(4) Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.

Effect of conviction of an offence under Part II.

**33.** Any person convicted of an offence under Part II shall, by reason of such conviction, be disqualified for a period of seven years from the date of such conviction from—

- (a) being registered as an elector or voting at any election under the Urban Council Ordinance;
- (b) being or being elected or appointed as a member of the Executive Council, the Legislative Council, the Urban Council and any other public body.

(Cap. 101.)

Extension of certain provisions in relation to offences under repealed Ordinance.  
(Cap. 215.)

**34.** (1) The provisions contained in Part III shall apply to and in respect of offences suspected or alleged to have been committed under the Prevention of Corruption Ordinance repealed by section 36 as they apply to and in respect of offences suspected or alleged to have been committed under this Ordinance.

(2) The references in sections 27, 29 and 30 to this Ordinance shall be deemed to include a reference to the Prevention of Corruption Ordinance repealed by section 36.

35. The Governor in Council may by order published in the  
Gazette amend the Schedule.

Amendment  
of Schedule.

36. (1) The Prevention of Corruption Ordinance is repealed.

Repeal and  
consequential  
amendment.

(2) The Urban Council Ordinance is amended—

(Cap. 215.)

(a) in section 6, by deleting from paragraph (d) "relating  
to corrupt and illegal practices"; and

(Cap. 101.)

(b) in section 17, by—

(i) deleting the full stop at the end of paragraph (b)  
of subsection (1) and substituting a semicolon; and

(ii) adding thereafter the following new paragraph—

"(c) any person convicted of any offence under Part  
II of the Prevention of Bribery Ordinance  
1970."

(102 of 1970.)

#### SCHEDULE.

[ss. 2(1) & 35.]

#### PUBLIC BODIES.

1. Hong Kong Electric Company Limited.
2. China Light and Power Company Limited.
3. Hong Kong and China Gas Company Limited.
4. Hong Kong Telephone Company Limited.
5. Cable and Wireless Limited.
6. China Motor Bus Company Limited.
7. Kowloon Motor Bus Company (1933) Limited.
8. Hong Kong Tramways Limited.
9. Peak Tramways Company Limited.
10. "Star" Ferry Company Limited.
11. Hong Kong and Yaumati Ferry Company Limited.
12. Cross-Harbour Tunnel Company Limited.
13. Hong Kong Commercial Broadcasting Company Limited.
14. Rediffusion (Hong Kong) Limited.
15. Television Broadcasts Limited.
16. Hong Kong Housing Authority.
17. Hong Kong Housing Society.
18. Hong Kong Settlers Housing Corporation Limited.

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Passed by the Hong Kong Legislative Council this 16th day  
of December, 1970.

R. J. FRAMPTON,  
*Clerk to the Legislative Council.*

*This printed impression has been carefully compared  
by me with the bill, and is found by me to be a true and  
correctly printed copy of the said bill.*

R. J. FRAMPTON,  
*Clerk to the Legislative Council.*