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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 67 OF 2000

L.S.TUNG Chee-hwa
Chief Executive
6 July 2000

An Ordinance to provide for the establishment of a programme for the protection of certain witnesses and persons associated with witnesses.

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Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Witness Protection Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

PART I

INTERPRETATION

2. Interpretation

- In this Ordinance, unless the context otherwise requires—
- “approving authority” (批准當局) means a person designated in writing by the Commissioner to be the approving authority;
- “board” (委員會) means the board established under section 14;
- “Commissioner” (處長、專員) means each of the Commissioner of Police and the Commissioner of the Independent Commission Against Corruption;
- “memorandum of understanding” (諒解備忘錄) means a memorandum of understanding entered into by the approving authority and a witness under section 6 setting out the basis on which the witness will be included in the witness protection programme;
- “participant” (參與者) means a witness who has been included in the witness protection programme;

“witness” (證人) means—

- (a) a person who has given, or who has agreed to give, evidence on behalf of the HKSAR in proceedings for an offence;
- (b) a person who has given, or who has agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence;
- (c) a person who has provided a statement or other assistance to a public officer in relation to an offence;
- (d) a person who, for any other reason, may require protection or other assistance under the witness protection programme; or
- (e) a person who, because of his relationship to or association with a person referred to in paragraphs (a) to (d), may require protection or other assistance under the witness protection programme;

“witness protection programme” (保護證人計劃) means the witness protection programme established under this Ordinance.

PART II

WITNESS PROTECTION PROGRAMME

3. Establishment of witness protection programme

The approving authority shall establish and maintain a programme, to be known as the witness protection programme, under which he arranges for or provides protection and other assistance for witnesses whose personal safety or well-being may be at risk as a result of being witnesses.

4. Selection for inclusion in witness protection programme

(1) Subject to a review under Part III, the approving authority has the sole responsibility of deciding whether or not to include a witness in the witness protection programme.

(2) A witness may be included in the witness protection programme only if—

- (a) the approving authority has decided that the witness be included;
- (b) the witness agrees to be included; and
- (c) the witness signs a memorandum of understanding in accordance with section 6 or—

- (i) if the witness is under 18 years, a parent or guardian of the witness signs such a memorandum; or
- (ii) if the witness otherwise lacks legal capacity to sign the memorandum, a guardian or other person who is usually responsible for the care and control of the witness signs such a memorandum.

(3) In addition to the nature of the perceived danger to the witness, the approving authority shall, in deciding whether or not to include a witness in the witness protection programme, have regard to—

- (a) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the witness protection programme;
- (b) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness' suitability for inclusion in the witness protection programme, that examination or evaluation;
- (c) the seriousness of the offence to which the relevant evidence or statement relates;
- (d) the nature and importance of that evidence or statement;
- (e) whether or not there are viable alternative methods of protecting the witness; and
- (f) the nature of the witness' relationship to other witnesses being assessed for inclusion in the witness protection programme,

and may have regard to such other matters as the approving authority considers relevant.

(4) If—

- (a) a parent, guardian or other person signs a memorandum of understanding pursuant to subsection (2)(c)(i) or (ii); and
- (b) the witness to which the memorandum relates is included in the witness protection programme and remains a participant on or after reaching 18 years or having legal capacity, as the case may be,

the approving authority may require the participant to sign another memorandum of understanding on or after reaching 18 years or having legal capacity, as the case may be.

(5) Where the approving authority considers a witness for inclusion in the witness protection programme pursuant to a request made by the witness and decides not to include the witness in the witness protection programme, he shall take reasonable steps to notify the witness in writing of his decision.

5. Witness to disclose necessary information before being included in witness protection programme

(1) The approving authority shall not include a witness in the witness protection programme unless he is satisfied that the witness has provided him with all information that the approving authority considers is necessary to decide whether or not the witness should be included.

(2) Without limiting the generality of subsection (1), the approving authority may—

- (a) require a witness to undergo psychological or psychiatric examinations and make the results available to the approving authority; or
- (b) make such other inquiries and investigations as the approving authority considers necessary,

for the purposes of assessing whether or not the witness should be included in the witness protection programme.

(3) In addition to the requirements under subsections (1) and (2), the approving authority may require a witness to undergo medical tests or examinations and make the results available to the approving authority to obtain information that may be needed in the event that the witness is included in the witness protection program.

6. Memorandum of understanding

(1) A memorandum of understanding shall—

- (a) set out the basis on which a participant is included in the witness protection programme and details of the protection and assistance that is to be provided; and
- (b) contain a provision to the effect that protection and assistance under the witness protection programme may be terminated if the participant breaches a term of the memorandum of understanding.

(2) A memorandum of understanding in relation to a participant may also contain—

- (a) the terms and conditions on which protection and assistance is to be provided to the participant, which may include a condition that protection and assistance may be withdrawn if—
 - (i) the participant commits an offence;
 - (ii) the participant engages in activities of a kind specified in the memorandum of understanding;
 - (iii) the participant compromises the integrity of the witness protection programme;

- (iv) the participant notifies the approving authority in writing that he wishes to terminate his protection; or
 - (v) the approving authority reasonably believes that the circumstances on which he based his decision to include the participant in the witness protection programme no longer exist or, for other reasons, it is no longer appropriate to extend protection or assistance to the participant;
 - (b) an agreement by or on behalf of the participant not to compromise, directly or indirectly, any aspect of the protection and assistance being provided;
 - (c) an agreement by or on behalf of the participant that the participant will comply with all reasonable directions of the approving authority in relation to the protection and assistance provided to the participant;
 - (d) an agreement by or on behalf of the participant that the participant will, if required to do so by the approving authority—
 - (i) undergo medical, psychological or psychiatric tests or examinations and make the results available to the approving authority; or
 - (ii) undergo drug or alcohol counselling or treatment;
 - (e) a list of—
 - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the participant; and
 - (ii) any other obligations of the participant,and an agreement by or on behalf of the participant as to how those obligations are to be met;
 - (f) a financial support arrangement;
 - (g) an agreement by or on behalf of the participant that the participant will disclose to the approving authority details of any criminal charges that are made against, and any civil or bankruptcy proceedings that are made in relation to, the participant after the participant is included in the witness protection programme; and
 - (h) such other terms and conditions as the approving authority may consider necessary in the circumstances of a particular case.
- (3) A witness becomes included in the witness protection programme when the approving authority signs the memorandum of understanding.
- (4) The approving authority shall, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

(5) The approving authority may, by notice in writing served personally on a participant, vary the memorandum of understanding, provided that the variation does not have the effect of removing from the memorandum of understanding the provisions referred to in subsection (1).

(6) A variation takes effect on the day on which the participant receives notice of it.

7. Action where witness is included in witness protection programme

If a witness is included in the witness protection programme, or is being assessed for inclusion in the witness protection programme, the approving authority shall take such action as he considers necessary and reasonable to protect the witness' safety and welfare.

8. Establishing new identity for participant in witness protection programme

(1) In this section, "public officer" (公職人員) means—

(a) the "Registrar" as defined in the Births and Deaths Registration Ordinance (Cap. 174);

(b) the "Commissioner" as defined in the Registration of Persons Ordinance (Cap. 177);

(c) the "Registrar" as defined in the Marriage Ordinance (Cap. 181).

(2) Subject to the recommendation of the Commissioner and the approval of the Chief Executive, the approving authority may establish a new identity for a participant.

(3) Where the approving authority considers establishing a new identity for a participant pursuant to a request made by the participant and decides not to establish a new identity for him, he shall take reasonable steps to notify the participant in writing of his decision.

(4) Where a decision is made to establish a new identity for a participant after he has been included in the witness protection programme, a new memorandum of understanding shall be prepared and signed by the participant before the new identity is created.

(5) If the participant is under 18 years or otherwise lacks legal capacity to sign the memorandum, it shall be signed in the manner as provided for in section 4(2)(c)(i) or (ii) (as the case may require), and if the participant remains a participant on or after reaching 18 years or having legal capacity, as the case may be, the approving authority may require him to sign another memorandum of understanding at that time.

(6) Notwithstanding any other Ordinance, where approval has been given to establish a new identity for a participant—

- (a) the approving authority shall notify the relevant public officer giving particulars of the new identity to be established and the documents that must be issued; and
- (b) on receiving such notification, the public officer shall take such steps as are necessary to issue those documents to the approving authority.

(7) A participant for whom a new identity is being established shall, on request, attend before the public officer and sign such documents or records or take such other steps as may be necessary to facilitate the establishing of the new identity.

(8) A document issued under the authority of this section shall be deemed to have been lawfully issued by the relevant public officer in accordance with the requirements of the Ordinance under which he purported to issue it.

(9) The approving authority shall not, under his powers under subsection (6), do anything which would cause a person to believe that a participant—

- (a) has qualifications that he does not, in fact, have; or
- (b) is entitled to benefits that he is not, in fact, entitled to.

9. Dealing with rights and obligations of participant

(1) If a participant has outstanding legal rights or obligations or is subject to legal restrictions, the approving authority shall take such steps as are reasonably practicable to ensure that—

- (a) those rights or obligations are dealt with according to law; or
- (b) those restrictions are complied with.

(2) If the approving authority is satisfied that a participant who has been provided with a new identity under the witness protection programme is using the new identity to—

- (a) avoid obligations that were incurred before the new identity was established; or
- (b) avoid complying with restrictions that were imposed on the person before the new identity was established,

the approving authority may give notice in writing, served personally on the participant, stating that he is so satisfied.

(3) A notice under subsection (2) shall also state that, unless the participant satisfies the approving authority that the obligations will be dealt with according to law or the restrictions will be complied with, the approving authority will take such action as he considers reasonably necessary to ensure that they are dealt with according to law or complied with.

(4) The action under subsection (3) by the approving authority may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his original identity.

10. Non-disclosure of original identity of participants

(1) Where—

(a) a participant who has been provided with a new identity under the witness protection programme would, apart from this section, be required by or under a law of Hong Kong to disclose his original identity for a particular purpose; and

(b) the approving authority has given the participant written permission not to disclose his original identity for that purpose,

the participant is not required to disclose his original identity to any person for that purpose.

(2) If a participant has been given permission under subsection (1) not to disclose his original identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose under or in relation to the relevant law of Hong Kong, to claim that his new identity is his only identity.

11. Termination of protection

(1) Subject to a review under Part III, the approving authority may terminate the protection of a participant.

(2) The approving authority shall, before terminating the protection, advise the participant in writing, which shall be served personally, of his decision to terminate the protection.

12. Restoration of original identity

(1) If—

(a) a participant has been provided with a new identity under the witness protection programme; and

(b) protection and assistance under the witness protection programme to the participant is terminated,

the approving authority may, with the approval of the Chief Executive or without such approval if the consent of the former participant is obtained, take such action as is necessary to restore the former participant's original identity.

(2) The approving authority shall take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the approving authority—

- (a) takes action under this section to restore the original identity of a person who was a participant; and
- (b) notifies the former participant in writing that he is required to return to the approving authority all documents provided to the former participant that relate to the new identity provided under the witness protection programme,

the former participant shall not, without reasonable excuse, refuse or fail to return those documents to the approving authority within 7 days after receiving the notice.

(4) Where a former participant's original identity is restored and he has outstanding legal rights or obligations or is subject to legal restrictions in respect of the identity that had been provided under the witness protection program ("the new identity"), section 9 applies to such rights, obligations and restrictions, and the approving authority may take the same actions as he could have if they had occurred before the new identity was established.

(5) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 2.

PART III

REVIEW OF APPROVING AUTHORITY'S DECISION

13. Request for review

(1) A person who is aggrieved by a decision of the approving authority under this Ordinance—

- (a) not to include him;
- (b) to terminate his protection as a participant; or
- (c) not to establish a new identity for him as a participant,

in the witness protection programme may request in writing that the approving authority's decision be reviewed by the board.

(2) Within 7 days after receiving the decision of the approving authority, the aggrieved person shall deliver to the approving authority a request for review stating the reasons for his request.

(3) After receiving such a request, the approving authority shall forward it and all relevant documents to the board.

(4) A request for a review under this section against a decision of the approving authority not to include a person in the witness protection programme or not to establish a new identity for a participant does not suspend the approving authority's decision unless he decides otherwise.

14. Establishment of board

(1) There is established a board to review decisions of the approving authority referred to in section 13(1)(a), (b) and (c).

(2) The board—

(a) shall consist of—

(i) an officer who is more senior than the approving authority designated by the Commissioner; and

(ii) 2 persons who are not public officers; and

(b) may also consist of additional members as determined by the chairman, who may be public officers or not public officers, and the members referred to in paragraphs (a)(ii) and (b) shall be selected from the panel referred to in subsection (4) in accordance with the procedure provided for in subsection (5).

(3) The officer referred to in subsection (2)(a)(i) shall be the chairman of the board.

(4) The Chief Executive shall, for the purposes of subsection (2)(a)(ii) and (b), appoint a panel of persons consisting of such number of public officers and other persons as he thinks fit.

(5) Members of the panel who are not public officers shall be selected to serve on the board in rotation in accordance with the alphabetical order of their surnames. The chairman may, in addition to such members, select members of the panel who are public officers, in such manner as he sees fit, to serve on the board.

(6) An appointment made under subsection (4) shall be notified in the Gazette.

(7) The board shall review the documents submitted to it under section 13(3) and shall advise the approving authority and the person who requested the review of its decision to confirm or reverse the decision being reviewed.

(8) Where the approving authority's decision is reversed, he shall amend his decision accordingly.

(9) The board may establish its own procedure for reviewing a decision.

PART IV**MISCELLANEOUS****15. Provision of information to officers and law enforcement agencies**

If—

- (a) a participant has been provided with a new identity or has been relocated under the witness protection programme; and
- (b) an officer under the Commissioner's authority or another law enforcement agency in or outside Hong Kong notifies the approving authority that the participant has been arrested or is liable to arrest for an arrestable offence,

the approving authority may—

- (i) release to the officer or law enforcement agency the new identity or new location of the participant;
- (ii) provide the officer or law enforcement agency with the criminal record of the participant and the participant's fingerprints;
- (iii) release to the officer or law enforcement agency such other information relating to the witness protection programme as the approving authority considers appropriate in the circumstances; and
- (iv) if the approving authority considers it appropriate to do so in the circumstances, allow officers of the law enforcement agency to interview him, or any officer working with him in the witness protection programme, in relation to the participant.

16. Officers protected from suit in respect of decisions under Ordinance

The approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme are not liable to any action, suit or proceedings (including criminal proceedings) under a law in force in Hong Kong in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Ordinance.

17. Offences

(1) A person shall not, without lawful authority or reasonable excuse, disclose information—

- (a) about the identity or location of a person who is or has been a participant or who has been considered for inclusion in the witness protection programme; or
- (b) that compromises the security of such a person.

(2) A person who is or has been a participant, or a person who has undergone assessment for inclusion in the witness protection programme as a participant, shall not disclose—

- (a) the fact that he is or has been a participant or has undergone assessment for inclusion in the witness protection programme;

- (b) information as to the way in which the witness protection programme operates;
- (c) information about any officer who is or has been involved in the witness protection programme;
- (d) the fact that he has signed a memorandum of understanding; or
- (e) any details of a memorandum of understanding that he has signed,

unless the person has been authorized by the approving authority to make the disclosure or has a reasonable excuse for doing so.

(3) A person who supplies information to the approving authority for the purpose of assisting the approving authority in deciding whether or not to include him in the witness protection programme shall not supply information which he knows or ought reasonably to know is false.

(4) A person who contravenes—

- (a) subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for 10 years;
- (b) subsection (2) commits an offence and is liable on conviction on indictment to imprisonment for 5 years;
- (c) subsection (3) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(5) Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under subsection (4)(c) may be brought at any time within 6 months after the first discovery of the offence by the approving authority.

(6) No proceedings shall be instituted for an offence under subsection (1)(b) except with the consent of the Secretary for Justice.

(7) This section applies to all persons whether acting in a private or an official capacity.

18. Approving authority and officer not to be required to disclose information

(1) Subject to subsection (2), the approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme shall not be required—

- (a) to produce in a court or before a tribunal, commission or official inquiry any document that has come into his or their custody or control in the course of, or because of, the performance of his or their duties in relation to the witness protection programme; or
- (b) to divulge or communicate to or before such a body any matter or thing that has come to his or their notice in the performance of his or their duties in relation to the witness protection programme,

except where it is necessary to do so for the purpose of carrying out the provisions of such programme.

(2) If it is essential to the determination of legal proceedings under or in relation to a law of Hong Kong that the judge or magistrate presiding over the proceedings be advised of a participant's location and circumstances, a person referred to in subsection (1) shall disclose the relevant information to the judge or magistrate in chambers, but the person shall not disclose the information unless he and the judge or magistrate are the only persons present.

(3) The judge or magistrate shall not disclose any information disclosed to him under subsection (2) otherwise than in accordance with this Ordinance.

19. Protection of witness giving evidence in court

(1) Where a participant is to give evidence for the HKSAR in legal proceedings, the judge or magistrate in charge of such proceedings may, upon an ex parte application by the prosecution, authorize a police officer or an officer of the Independent Commission Against Corruption to require all members of the public wishing to enter the courtroom to—

- (a) identify themselves to the satisfaction of the officer; and
- (b) undergo such search as the officer may require to ensure that they are not carrying into the courtroom anything which the officer considers would pose a threat to the security or well-being of the participant.

(2) An application under subsection (1) shall be heard in chambers.

(3) Where a person refuses to comply with subsection (1) or the officer is not satisfied that he is not carrying anything referred to in subsection (1)(b), the officer may, subject to any direction of the judge or magistrate, prevent him from entering the courtroom.

20. Regulations

The Chief Executive in Council may make regulations for the better implementation of the provisions of this Ordinance.