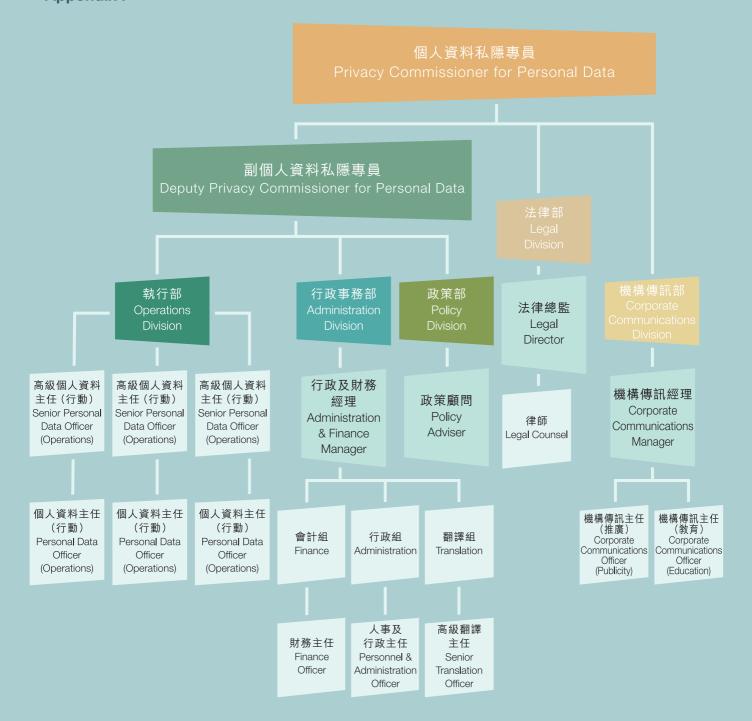
# 附 錄 Appendices



# 公署組織架構 PCO Organization Chart

# 附錄一 Appendix I



# 公眾對<mark>建議中的法例所作的</mark> 評論

# Comments on Proposed Legislation by the PCO

# 附錄二 Appendix II

# 對《升降機及自動梯(安全)條例》作 出的建議修訂

有建議應對《升降機及自動梯(安全)條例》作出修訂,訂明升降機工程人員及自動梯工程人員必須註冊。在此方面,機電工程程署已,機電工程人員必須註冊。在此方面,機電工程是別立註冊升降機工程人員名冊及署主題名冊一事徵設立有關之署的意見是原則上不認為設立有關不過,以及有絕對需要的情況不會應接到有關之間,以及有過名一個人資料的自動,以及注意保管內面,以及有過去達致該目的。此外,為發出會於不便發記冊的的方法達致該目的。此外,為發出會於不便發記冊內的工程署長注意民政事務局發出冊內的工程署所載事項,以及注意保障登記冊內的工程對所須採取的措施。

機電工程署署長遂於草擬委託書擬稿中加入一項建議,指出應在《升降機及自動梯(安全)條例》的升降機/自動梯工程人員名冊中加入目的聲明,以及應限制名冊中可供公眾查閱的資料類別。此外,機電工程署署長亦檢討現有的升降機工程師名冊及自動梯工程師名冊,在同一草擬委託書擬稿中加入有關名冊的目的及可供公眾查閱的資料類別。

# Proposed Amendments to the Lifts and Escalators (Safety) Ordinance

It was proposed that amendments be made to the Lifts and Escalators (Safety) Ordinance ("the LE(S)O") to provide for the registration of lift and escalator workers. In this connection, the Director of Electrical and Mechanical Services consulted the PCO with regard to the proposed establishment of a register of lift workers and a register of escalator workers under the amendments. The PCO advised that, in principle, the PCO did not see any problem under the PD(P)O for the establishment of the proposed registers, but the registers should not be made available for public inspection unless absolutely necessary. In particular, consideration should be given to any objective of the proposed disclosure of registrants' personal data and whether the objective could not be practicably achieved through any alternative means. The attention of the Director of Electrical and Mechanical Services was drawn to the Guidelines on public registers issued by the Home Affairs Bureau on matters to be noted and measures to be taken for the protection of personal data to be included in public registers.

In response, the Director of Electrical and Mechanical Services included in his draft Drafting Instructions a proposal to incorporate the purposes of the registers of lift/escalator workers into the LE(S)O and to restrict the types of information available for public inspection from the proposed registers. In addition, the Director of Electrical and Mechanical Services has reviewed the existing registers of lift/escalator engineers and lift/escalator contractors. The purposes of these registers and the restrictions on the types of information available for public inspection were also included in the same draft Drafting Instruction.

# PCO私 PCO私

# 《2002年強制性公積金計劃(修訂) 條例草案》

本條例草案建議設立和保存在註冊計劃中擁有無人申索的權益的計劃成員的記錄冊,供公眾查閱,目的是「以使可能在註冊計劃中享有權益的人確定他在計劃中是否擁有無人申索的權益」。鑑於公共登記冊可供公眾人士查閱,公署關注到可能由非預期搜尋資料引致的濫用情況,導致不必要地侵犯計劃成員的資料私隱。有鑑於此,公署去信強制性公積金計劃管理局(「積金局」),建議採用查詢服務,而非採用公共登記冊的形式。

公署亦關注到建議中的記錄冊會以積金局決定的格式載入積金局決定「須載入的資料」。由於並無對須載入的資料加以規定,公署建議記錄冊不應載有超乎履行擬設目的所需的資料。公署建議有限的身份識辨資料(例如香港身份證號碼,但不包括計劃成員的姓名)已足以履行有關目的。

積金局其後向公署確認有關建議曾在出席者 包括計劃受託人、僱主及僱員的諮詢會議上 詳加討論。設立記錄冊的目的是要為擁有無 人申索權益的個人提供另一個追踪他們的權 益的方法。這亦有助減低找出沒有提出申索 或下落不明的計劃成員所涉及的行政困難及 費用。積金局向公署保證會考慮公署的意 見,以防非預期搜尋資料及不必要地披露計 劃成員的個人資料。

# Mandatory Provident Fund Schemes (Amendment) Bill 2002

The Bill proposed to establish and maintain a public register for open inspection of scheme members who have unclaimed benefits in the scheme. The purpose was to "enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has unclaimed benefits in the scheme". Given the open nature of the public register, the PCO was concerned about the risk of abuse by unintended searches resulting in unnecessary infringement of the members' data privacy. As such, the PCO wrote to the Mandatory Provident Fund Schemes Authority proposing the alternative of an enquiry service as opposed to a public register.

The PCO also noted that the proposed register would be in such form and contain "such information" as the Authority may determine. As there was no specification of the information to be so contained, the PCO advised that the register should contain no more data than necessary for the intended purpose. It was suggested that limited data sufficient to identify the members (e.g. HK Identity card number without the member's name) would perhaps be good enough for the purpose.

In response, the Authority confirmed that the proposal had been thoroughly discussed in a consultation forum comprised of scheme trustees, employers and employees. The establishment of a public register was intended as an alternative avenue for individuals with unclaimed benefits to trace the whereabouts of their benefits. It also helped to reduce the administrative difficulty and costs in locating members who failed to lodge claims or those who could not be located. The Authority reassured the PCO that it would take its advice into account to prevent unintended searches and unnecessary disclosure of members' personal data.

# 《聯合國(反恐怖主義措施)條例 草案》

本條例草案旨在實施聯合國安全理事會 2001年9月28日第1373號決議中關於防止恐 怖主義行為的措施的決定,以及實施財務行 動特別組織《關於資助恐怖份子的特別建議》 中某些建議。

公署留意到本條例草案賦予當局廣泛權力,可規定市民提供所需要的資料。有關資料可包括提供資料的市民的個人資料或他人的個人資料。鑑於反恐的目標重大,條例草案的人資料。鑑於反恐的目標重大,條例草本與關鍵性的作用。不過,在所賦予的廣泛權力中,事實上有些可能屬於超越達致有關目標所絕對需要的權力。公署特別注意到若標所絕對需要的權力。公署特別注意到若等12條、第14(9)條及建議的附表2的第1條一併執行的話,將賦予「獲授權人員」廣泛權力,可迫使他人提供資料。此外,根據條例草案第15條,保安局局長可用書面委任任何人為「獲授權人員」,而第18條更授權保安局局長只須在憲報刊登公告,便可修訂第2附表(或其他附表)。

在此方面,公署去信保安局局長,詢問為何無指明哪類人士可獲委任為「獲授權人員」,而不是指定例如只有公職人員,或更佳的做法是指定某一類公職人員,才可獲委任。除非有強烈理據支持,公署關注到非公職人員因何有需要被委任為「獲授權人員」(因而獲賦予第2附表第1條的廣泛權力)。在此方面,公署考慮到或須對條例草案第15條下的「獲授權人員」的定義加以限制。此外,基於獲授權人員根據附表2所獲賦予的廣泛權力,公署希望附表2日後的任何修訂(最低限度)應透過附屬法例的形式進行,並因此而受到詳細審議。

其後,當通過有關法例時,法例限定保安局局長可委任為「獲授權人員」的類別,規定有關人員必須為公職人員。此外,第15(1)條及附表2下的條文亦予以刪除。

# United Nations (Anti-terrorism Measures) Bill

This Bill sought to implement a decision of the Security Council of the United Nations in its Resolution 1373 of 28 September 2001 relating to measures for the prevention of terrorism and certain of the Special Recommendations on Terrorist Financing of the Financial Action Task Force.

The PCO noted that the Bill conferred on the authorities wide powers to require information from citizens. The information may include personal data of the citizens so providing the information or that of other individuals. Given the importance of the anti-terrorism objective, some aspects of the wide powers as referred to in the Bill might be considered crucial for the attainment of the objective. However, there might be certain other aspects of those wide powers that might exceed what was in fact absolutely necessary for achieving the objective. In particular, the PCO noted that clause 12, clause 14(9) and the proposed section 1 of schedule 2 of the Bill, taken together, conferred upon an "authorized officer" very wide powers to compel the provision of information. Furthermore, under clause 15 of the Bill, the Secretary of Security might authorize in writing any person to be an "authorized officer". Also, clause 18 of the Bill conferred on the Secretary for Security the power to amend (inter alia) Schedule 2 simply by notice in the Gazette.

In this connection, the PCO wrote to the Secretary for Security asking why the category of persons to be appointed as authorized officers should be left openended, rather than confined to, say, public officers or, better still, a particular class of such officers. Unless there happened to be strong justification, the PCO was concerned that even persons not being public officers might need to be appointed "authorized officer" (and be vested with the wide powers under section 1 of schedule 2 accordingly). In this regard, the PCO considered the definition of "authorized officer" under clause 15 of the Bill might need to be restricted. Moreover, given the wide powers to be conferred upon authorized officers under schedule 2, the PCO would prefer to see any future amendment to schedule 2 to be in the form of (at least) subsidiary legislation and, as such, be subject to scrutiny.

Subsequently, when the relevant law was passed, it restricted the class of person that the Secretary for Security might appoint as "authorized officers" to public officers. In addition, provisions under clause 15(1) and schedule 2 were deleted.

# PCO私

# 《道亨銀行有限公司(合併)條例 草案》

本條例草案旨在就道亨銀行有限公司、DBS 廣安銀行有限公司及海外信託銀行有限公司 合併訂定條文。公署被要求對此條例草案作 出評論。草案其中一條條文與合併所引致的 個人資料私隱問題有關。根據該條文,進行 合併的銀行在將所持有的個人資料移轉予 併後的銀行時,毋須向資料當事人取得和 條例保障資料第3原則所規定的「訂明同 意」。由於該條文的內容與早前其他銀行 行類似合併時所涉及的條例草案的條文相 同,而公署亦已核准有關條文,故公署不對 此條例草案作出進一步評論。

# 《2001年税務(修訂)(第2號)條例 草案》

本條例草案旨在提供一個法律架構,讓市民 可使用密碼及電話提交報税表。條例草案委 員會要求公署就草案發表意見。公署在回應 中指出個人報税表載有當事人的敏感性個人 資料。嚴格來說,稅務局局長在收到及持有 報税表前,可能並不是報税表中個人資料的 「資料使用者」。不過,為保障有關人士的資 料私隱,故有需要確保所採用的資料傳輸方 式是安全的。在此方面,公署未獲提供以電 子或電話報税所採用的保安措施詳情,故無 法對此作出任何具體評論。不過,鑑於報稅 表中的個人資料為敏感性的資料,公署建議 擬作的安排應包括足夠的保安措施,確保以 妥善的方式傳輸有關資料。舉例來說,這些 措施可包括將密碼保密及將傳輸中的資料加 密等保安措施,並且為負責接收報税表的税 務局職員提供足夠培訓及督導。

# Dao Heng Bank Limited (Merger) Bill

This Bill sought to provide for the merger of Dao Heng Bank Limited, DBS Kwong On Bank Limited and Overseas Trust Bank, Limited. The PCO was asked to comment on the Bill. One particular clause of the Bill dealt with issues relating to personal data privacy arising from the merger. That clause dispensed with the need for the merging banks to obtain "prescribed consent" from the data subjects under DPP3 of the PD(P)O when personal data held by the merging banks were transferred to the resulting entity. As the contents of the relevant clause was identical with the corresponding clause in previous bills involving similar mergers of banks which the PCO had already approved, the PCO made no further comment on the Bill.

# Inland Revenue (Amendment) (No.2) Bill 2001

This Bill sought to provide the necessary legal framework for the use of passwords and telephones in filing tax returns. The Bills Committee invited the PCO to give views on the Bill. In response, the PCO commented that the tax return of an individual contained sensitive personal data of the individual. Strictly speaking, the Commissioner of the Inland Revenue may not become a "data user" in relation to the personal data contained in a tax return until the tax return is furnished to him and thus come into his possession. However, in the interest of protecting the data privacy of the individuals concerned, it was important to ensure that the mode of transmission of the data in question would be secure. In this connection, since the PCO had not been informed in detail about the security safeguards that might be available in relation to any tax returns furnished electronically or by "telefiling", the PCO were not in a position to make any specific comments in this regard. However, given the sensitivity of the personal data contained in a tax return, the PCO suggested that the proposed arrangement should include adequate safeguards to ensure the security of the data transmitted. These might include, for example, safeguards to ensure the security of the passwords, availability of encryption for transmitted data, adequate training and supervision of IRD staff handling the receipt of tax returns.

### 《村代表選舉條例草案》

民政事務局局長在回應時指出有需要收集身份證明文件的副本,以方便海外代理人從存放於香港以外地方的資料庫核實申請人的身份。要求提供身份證明文件副本的目的是要決定申請登記為選民的人的資格,該目的是主議的附屬法例,即《選舉管理委員會(選民登記)(村代表選舉)規例》(第541K章)的第10(2)條中列述。至於甚麼資料為已登記選民的「其他有關詳情」,此詞的釋義將在上述規例的第18(8)條中界定,意即有關人士的主要地址。故此,建議在上述規例加為的條文,已對公署就條例草案所提出的問題作出澄清。此條例草案及上述規例已在二零零三年二月通過。

### **Village Representative Election Bill**

The Bill sought to provide for, inter alia, the elections of Resident Representatives and Indigenous Inhabitant Representatives for an Indigenous Village or a Composite Indigenous Village. Section 15(5)(d)(ii) required that a person who applied to be registered as an elector to supply the Electoral Registration Officer with a copy of his identity document if it is not an identity card. Given that the identity document contains personal data of a sensitive nature, the PCO was concerned about the justification for the collection of copy of the document and the purpose for such collection. It was further noted that section 17(4)(c) empowered the Election Registration Officer to register the names and other relevant particulars of the persons applied to be registered as electors when compiling the provisional register for a village which is open for public inspection. Since the term "other relevant particulars" was not defined in the Bill, the PCO raised the issue that it was unclear what specific data would be disclosed.

In response, the Secretary for Home Affairs advised that the collection of copy of the identity document was necessary in order to facilitate the verification of the identity of the applicant by agents overseas from databases that were situated outside Hong Kong. The purpose of requiring the copy of the identity document would be spelt out in the proposed subsidiary legislation, i.e. section 10(2) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation, Cap. 541K, namely, for the purpose of determining eligibility for applying to be registered as an elector. As for what constituted "other relevant particulars" of the registered electors, the term would be defined in section 18(8) of the said Regulation, to mean the principal residential address. The provisions proposed to be included in the said Regulation thus served to clarify the aforesaid matters raised by the PCO in relation to the Bill. The Bill and the said Regulation were passed in February 2003.

# PCO私 潛

## 《教育(修訂)條例草案》

本條例草案旨在修訂《教育條例》的條文。根據新的第28(a)條,法團校董會校董的個人資料會注入可供公眾查閱的登記冊。目前的第8(2)條授權教育統籌局常任秘書長(「常任秘書長」)將他認為有需要的「任何其他詳情」載入登記冊內。由於沒有界定「任何其他詳情」應包括哪些資料的條文,這情況可能導致加入不需要或與收集目的無直接相關的個人資料。公署促使教育統籌局局長注意民政事務局發出的公共登記冊指引所述事項,以及注意保障公共登記冊內個人資料所須採取的措施。

此外,新的第30(1A)(b)(ii)條加入了一項新規定,訂明申請註冊為校董的人士須在常任秘書長提出要求時,出示醫生證明書,證明申請人適合執行校董的職能。此外,如校董在常任秘書長提出要求後沒有出示該醫生證明書,常任秘書長有權取消校董的註冊。在此方面,公署注意到根據新的第30(1A)(b)(ii)條所收集的個人資料,如何與校董的職能或活動直接有關並不明確,而保障資料第1原則規定個人資料必須是為了直接與資料使用者的職能或活動有關而收集。公署的意見是有關方面在收集可能載有申請人的敏感性健康資料的醫生證明書時,必須遵守保障資料第1原則的規定。在本年報期內,此事並無進一步進展。

### 《公司條例》的建議修訂

公署早前曾就《2002年公司(修訂)條例草案》提出評論,指出有需要在《公司條例》規定備存的每一公共登記冊,明確列明公眾查閱該等登記冊的目的。財經事務及庫務局局(續下頁)

### **Education (Amendment) Bill**

The Bill sought to amend the provisions of the Education Ordinance. Under the new section 28(a), personal particulars of the managers of the incorporated management committee will be entered in the register available for public inspection. The existing section 8(2) empowers the Permanent Secretary for Education and Manpower ("the Permanent Secretary") to enter such other particulars as he considers necessary in the register. In the absence of provisions defining what "such other particulars" proposed to cover, it might lead to entry of personal data that are not necessary or directly related to the purpose of their collection. The attention of the Secretary for Education and Manpower was drawn to the Guidelines on public registers issued by the Home Affairs Bureau on matters to be noted and measures to be taken for the protection of personal data to be included in public registers.

In addition, the new section 30(1A)(b)(ii) imposed a new requirement upon the person applying to be registered as manager to produce to the Permanent Secretary upon request a medical certificate certifying that the applicant was fit to perform the functions of a manager. The Permanent Secretary was also empowered to cancel the registration if the manager failed to produce upon request the medical certificate. In this connection, the PCO noted that it was unclear how the collection of personal data under the new section 30(1A)(b)(ii) would be relevant to a purpose directly related to the function or activity of the Manager as required under DPP1. The PCO commented that the requirements of DPP1 should be complied with when collecting a medical certificate of the applicant that might contain sensitive health data. There was no further development in the matter during the period under review.

# Proposed amendments to the Companies Ordinance

The PCO had previously commented on the Companies (Amendment) Bill 2002 concerning the need to specify the purpose(s) of access to each public register maintained pursuant to the Companies Ordinance by members of the public. In response, the Secretary for Financial Services and Treasury proposed to include in

(to be continued on next page)

長在回應中,建議在下一次修訂《公司條例》 時,在第305條下加入新的第(1A)款,而其 下的第(a)(i),(ii)及(iii)段訂明讓公眾查閱及確 定公司、其董事及其他高級人員的資料的目 的。公署再次提醒財經事務及庫務局局長依 從民政事務局發出的公共登記冊指引的規定 的重要性,以及考慮對不當使用登記冊內個 人資料的人士加以制裁的可行性。在本年報 期內,此事並無進一步進展。

### 《建造業工人註冊條例草案》

本條例草案旨在就建造業工人註冊、設立建 造業工人註冊管理局及相關事宜訂定條文。 條例草案主要涉及兩項與私隱有關的事宜。 首先,草案建議設立註冊建造業工人名冊, 供大眾查閱及檢視。其次,草案建議以聰名 咭的形式儲存工人的個人資料。在條例草案 的草擬階段,公署指出應明確述明查閱資料 的目的,以及名冊中工人的哪類個人資料可 供大眾查閱,免得從名冊取得的個人資料被 使用於不當的用途。公署指出依從民政事務 局為保障個人資料發出的公共登記冊指引的 建議的重要性。此外,亦須為以電子形式儲 存的資料制訂足夠保安措施,以防出現「改 變用途」的情況,以及在未經有關建造業工 人同意,不得將與他們職務無關的資料 儲存。

環境運輸及工務局局長在回應中指出已在條 例草案中加入條文,界定在何種情況下建造 業工人註冊主任可向其他公共機構披露工人 的個人資料、名冊中會載有哪類個人資料, 以及可讓公眾查閱該等資料的目的。至於防 止[改變用途]方面,局長證實會慎重考慮顧 問就電腦化註冊管理系統(Computerized Registration Management System)所建議 的意見,以確保只為施行建造業工人註冊制 度收集資料。關於保安措施,局長亦確認會 實施另一層加密措施,只准許檢索擬定目的 所需的資料。在制裁方面,條例草案訂明任 何人士如無合法授權而改動從註冊證印刷出 來,以及記錄或儲存於註冊證內的任何資料 或損毀有關資料,即屬犯罪,一經定罪,可 處第3級罰款。

the next amendment bill a new subsection (1A) to section 305 of the Companies Ordinance. The purposes of enabling the public to access and ascertain the particulars of the company, its directors and other officers would be respectively provided for under paragraphs (a)(i), (ii) and (iii) of the said subsection (1A). The Secretary was reminded again of the importance to follow the Guidelines on public registers issued by the Home Affairs Bureau and to consider the possibility of imposing sanctions against the improper use of personal data contained in the register. There was no further development in the matter during the period under review.

### **Construction Workers Registration Bill**

This Bill sought to provide, inter alia, for the registration of construction workers, the establishment of a Construction Workers Registration Authority and related matters. There were two major issues of privacy concern arising from the Bill. First, it was proposed to establish a register of the registered workers for public access and inspection. Secondly, it was proposed to store the workers' personal data in the form of a smart card. At its drafting stage, the PCO advised that the purpose for inspection and the type of personal data of the workers available for public inspection through the public register should be clearly specified lest there be any improper use of the personal data obtained from the register. The PCO pointed out the importance of following the recommendations set out in the Guidelines on public registers issued by the Home Affairs Bureau for the protection of personal data. Adequate security safeguards should be put in place for the storage of data in electronic form to prevent any "function creep" and data unrelated to the function of construction workers registration should not be stored without the consent of the workers concerned.

The Secretary for the Environment, Transport and Works responded by incorporating provisions in the Bill and defining the circumstances under which the Construction Workers Registrar might disclose information of the workers to other public body, the type of personal data that were to be entered in the register and the purpose of making those data available for public inspection. As for the prevention of "function creep", the Secretary confirmed that due consideration would be given to implement the advice proposed by the consultant on Computerized Registration Management System to ensure that data would only be collected for the purpose of the Construction Workers Registration System. As regards security measures, the Secretary also confirmed that a separate level of encryption measures would be implemented to allow only the retrieval of necessary personal data for the purpose intended. In imposing sanctions, the Bill provides that any person who, without lawful authority, alters any data printed, recorded or stored in the registration card or defaces it commits an offence and is liable on conviction to a fine of level 3.

# 對《個人資料(私隱)條例》 作出的修訂

Changes to the Personal Data (Privacy) Ordinance

附錄三 Appendix III

在二零零二年四月一日至二零零三年三月三十一日期間,《個人資料(私隱)條例》曾作出以下修訂。

# 附表2(第1(2)、2(2)、2(3)及3(2) 條)

立法會於二零零二年六月十九日根據《釋義及通則條例》(第1章)第54A條提出和通過的決議,議決《個人資料(私隱)條例》附表2的條文(第1(2)、2(2)、2(3)及3(2)條)自二零零二年七月一日起作出修訂,廢除當中的「庫務局局長」而代以「財經事務及庫務局局長」。

### 雜項修訂

根據《2002年成文法(雜項規定)條例》(2002年第23號),《個人資料(私隱)條例》自二零零二年七月十九日起作出下述修訂:

- (i) 第2(7)條已予修訂,廢除「會同行政會議」;
- (ii) 第30(6)條已予修訂,廢除第「(4)款」一詞 而代以「第(5)款」;及
- (iii) 附表5第4段已予修訂,廢除「使用者」而 代以「當事人」,以及以「改正」取代 「杳閱」。

During the period of 1 April 2002 to 31 March 2003, the following changes were made to the PD(P)O.

# Schedule 2 (sections 1(2), 2(2), 2(3) and 3(2))

By the resolution made and passed by the Legislative Council under section 54A of Interpretation and General Clauses Ordinance (Cap. 1) on 19 June 2002, the provisions specified in schedule 2 (sections 1(2), 2(2), 2(3) and 3(2)) of the PD(P)O was amended with effect from 1 July 2002 by repealing "Secretary for the Treasury" whenever it appears and substituting "Secretary for Financial Services and the Treasury".

### **Miscellaneous Amendments**

By the Statute Law (Miscellaneous Provisions) Ordinance 2002 (No. 23 of 2002), the following amendments were made to the PD(P)O with effect from 19 July 2002:

- (i) section 2(7) was amended in that the term "會同行政會議" was repealed;
- (ii) section 30(6) was amended in that the term "(4) 款" was replaced by "(5) 款"; and
- (iii) paragraph 4 of schedule 5 was amended in that the term "使用者" was replaced by "當事人" and the term "查閱" was replaced by "改正".