LAWS OF HONG KONG

PUBLIC FINANCE ORDINANCE

CHAPTER 2

REVISED EDITION 1983

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER
HONG KONG

CHAPTER 2

PUBLIC FINANCE ORDINANCE

ARRANGEMENT OF SECTIONS

Section *Page*

PART I

PRELIMINARY

1. Short title ... 3
2. Interpretation ... 3
3. The general revenue ... 4
4. Charges on the general revenue ... 4

PART II

THE ESTIMATES OF REVENUE AND EXPENDITURE, AND APPROPRIATION

5. Annual estimates ... 4
6. Approval of estimates of expenditure and appropriation ... 5
7. Authorization of expenditure in advance of appropriation ... 5
8. Changes to the approved estimates of expenditure ... 6
9. Supplementary Appropriation ... 7

PART III

CONTROL AND MANAGEMENT

10. General powers and duties of the Financial Secretary ... 7
11. Power to make regulations and give directions, etc. ... 7
12. Controlling officers ... 8
13. Controlling officers to obey regulations and directions, etc. ... 8
14. Authority of controlling officers to incur expenditure ... 8
15. Further authority of controlling officers in respect of urgent expenditure ... 8

PART IV

RECEIPT, PAYMENT AND CUSTODY OF PUBLIC MONEYS

16. Duties of Director of Accounting Services ... 9
17. Prompt collection of moneys ... 10
18. Payment of public moneys ... 10
19. Payment of certain moneys to be authorized by warrant ... 10
20. Recoverable advances ... 10
21. Advances to meet urgent need for payment ... 10
22. Imprests ... 11
23. Deposits ... 12
24. Donations and grants ... 12
25. Banking ... 12
26. Investment of moneys ... 12
27. Borrowing powers and loans ... 13

Section		*Page*
28.	Guarantees	13
29.	Establishment of funds...	13
30.	Special suspense accounts	13
31.	Appropriations and warrants to lapse at close of financial year	14
	PART V	
	SURCHARGE	
32.	Power to surcharge	14
33.	Notification of surcharge and right of appeal	15
34.	Appeal against surcharge	15
35.	Withdrawal of surcharge	15
36.	Collection of surcharge...	15
37.	Surcharge in respect of deceased persons	16
	PART VI	
	MISCELLANEOUS	
38.	Abandonment of claims, etc. and write-off of public moneys and stores	16
39.	Disposal of serviceable stores, etc.	17
40.	Power of Governor to give directions...	17
41.	Trusts	17
42.	Transitional	17
First Schedule.	Funds	18
Second Schedule.	Special Suspense Accounts	18

CHAPTER 2

PUBLIC FINANCE

To provide for the control and management of the public finances of Hong Kong and for incidental and connected purposes.

Originally 3 of 1983.

[1 April 1983.]

L.N. 109 83.

8 of 1984
16 of 1985
L.N. 79/86
16 of 1988
42 of 1988
11 of 90

PART I

PRELIMINARY

1. This Ordinance may be cited as the Public Finance Ordinance. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

"Appropriation Bill" and "Appropriation Ordinance" means a Bill or Ordinance, as the case may be, which provides for appropriation from the general revenue in respect of the approved estimates of expenditure on the services of the Government for a financial year;

"approved estimates of expenditure" means the estimates of expenditure deemed to be approved under section 6;

"controlling officer" in relation to a head or subhead means the officer designated as controlling officer of that head or subhead under section 12;

"Director of Audit" means the Director of Audit appointed under section 3 of the Audit Ordinance; (Cap. 122.)

"enactment" includes an imperial enactment;

"expenditure" includes expenditure on the services of the Government required to be met under any enactment;

"Finance Committee" means the Finance Committee of the Legislative Council established under the Standing Orders of the Legislative Council;

"general revenue" means moneys which under this Ordinance or any other enactment are to be paid into or to form part of the general revenue;

"head" means a head of expenditure;

"public moneys" means—

(*a*) the general revenue;

(*b*) any moneys which are accounted for, in whole or in part, in the books or records of account of—

(i) the Director of Accounting Services;

(ii) the Registrar General in his capacity as the Registrar General, the Land Officer, the Registrar of Companies, the Registrar of Trade Marks, the Registrar of Patents, the Official Receiver, the Official Solicitor or the Official Trustee; or

(iii) the Registrar of the Supreme Court in his capacity as the Registrar, the Official Administrator or the Master in Lunacy; and

(*c*) any other moneys which the Governor may declare in writing to be public moneys for the purposes of this Ordinance;

"subhead" means a subhead of expenditure;

"Supplementary Appropriation Bill" and "Supplementary Appropriation Ordinance" means a Bill or Ordinance, as the case may be, which provides for appropriation from the general revenue in supplementation of the appropriation already made by an Appropriation Ordinance.

The general revenue.

3. (1) Except where otherwise provided by or under this Ordinance or any other enactment any moneys raised or received for the purposes of the Government shall form part of the general revenue.

(2) Where a refund or drawback of such moneys is made in the financial year in which they are collected, the moneys required for the refund or drawback shall thereupon cease to form part of the general revenue.

(3) For the avoidance of doubt it is hereby declared that the reference in subsection (1) to moneys raised or received for the purposes of the Government does not include moneys held on trust.

Charges on the general revenue.

4. No expenditure shall be charged on the general revenue except as provided by or under this Ordinance or any other enactment.

PART II

THE ESTIMATES OF REVENUE AND EXPENDITURE. AND APPROPRIATION

Annual estimates.

5. (1) The Financial Secretary shall cause to be prepared in each financial year estimates of the revenue and expenditure of the Government for the next following financial year, and shall cause such estimates to be laid before the Legislative Council before or as soon as practicable after the commencement of the financial year to which they relate.

(2) Subject to subsection (3), the estimates of revenue and expenditure shall be in such form as the Financial Secretary may from time to time direct.

(3) The estimates of expenditure shall—

(*a*) classify expenditure under heads and subheads with the ambit of each head described;

(*b*) in respect of each head show the estimated total expenditure, the provision sought in respect of each subhead, the establishment of posts (if any), and the limit (if any) to the commitments which may be entered into in respect of expenditure which is not annually recurrent; and

(*c*) specify the controlling officer designated in respect of each head and subhead under section 12.

(4) Where there is a requirement under any enactment that expenditure be met from the general revenue, provision for such expenditure shall be included in the estimates of expenditure for the purposes of this Part, but without prejudice to the validity or effect of any such requirement.

Approval of estimates of expenditure and appropriation.

6. (1) The heads contained in the estimates of expenditure for a financial year shall be included in an Appropriation Bill which shall be introduced into the Legislative Council at the same time as the estimates.

(2) Upon the enactment of the Appropriation Ordinance the estimates of expenditure for the financial year to which the Ordinance relates shall be deemed to be approved to the extent that they are provided for in the Ordinance and shall have effect from the first day of such financial year.

(3) Expenditure for the financial year on the services of the Government shall, subject to this Ordinance, be arranged in accordance with the heads and subheads and be limited by the provision in each subhead shown in the estimates of expenditure as approved or as may subsequently be changed from time to time in accordance with section 8.

Authorization of expenditure in advance of appropriation.

7. (1) The Legislative Council may, in advance of an Appropriation Ordinance, by resolution authorize expenditure for the services of the Government in respect of a financial year to be charged on the general revenue, in accordance with this Ordinance and subject to such limitations and conditions as may be specified in the resolution.

(2) Expenditure charged on the general revenue pursuant to a resolution under this section shall be arranged in accordance with the heads and subheads shown in the estimates of expenditure laid under section 5 and the provisions of this Ordinance shall, for the purposes of this subsection and subject to such conditions and limitations as may be specified in the resolution, apply to such estimates as though they were the approved estimates of expenditure.

(3) Expenditure charged on the general revenue pursuant to a resolution under this section shall be set off against the amounts respectively provided in the Appropriation Ordinance upon the same coming into operation.

Changes to the approved estimates of expenditure.

8. (1) Subject to this section, no changes shall be made to the approved estimates of expenditure except with the approval of the Finance Committee upon a proposal of the Financial Secretary.

(2) Without limiting the generality of subsection (1) such changes may provide for all or any of the following matters—

(*a*) the creation of new heads or subheads;

(*b*) supplementary provision in approved or new subheads;

(*c*) variations in the establishments of posts;

(*d*) increases in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent.

(3) The Finance Committee may delegate to the Financial Secretary the power to approve changes subject to such conditions, exceptions and limitations as are specified in the delegation.

(4) The Financial Secretary, where a delegation by the Finance Committee under subsection (3) so provides, and subject to such conditions, exceptions and limitations as are specified in the delegation, may further delegate his power to approve changes to any public officer.

(5) A delegation to any public officer under subsection (4) shall be subject to such further conditions, exceptions and limitations as the Financial Secretary may specify.

(6) Nothing in subsection (1) shall be construed as limiting or affecting—

(*a*) the power of the Governor to make any proposal, or allow or direct any proposal to be made, to the Legislative Council, the object or effect of which is to require a change to the approved estimates of expenditure; or

(*b*) a requirement under any enactment that expenditure be met from the general revenue.

(7) The Financial Secretary shall cause such changes to be made to the approved estimates of expenditure as are necessary in respect of any—

(*a*) approval given under subsection (1), (3) or (4);

(*b*) expenditure pursuant to a proposal referred to in subsection (6)(*a*); or

(*c*) requirement referred to in subsection (6)(*b*) not otherwise provided for by approval under this section.

(8) The Financial Secretary shall at the end of each quarter of the financial year or as soon as practicable thereafter—

(*a*) report to the Finance Committee changes made to the approved estimates of expenditure in that quarter upon approval by him or by any public officer pursuant to a delegation under subsection (3) or (4), as the case may be; and

(*b*) table in the Legislative Council a summary of all changes made to the approved estimates of expenditure in that quarter under this section.

(9) Without prejudice to section 9, expenditure in respect of which a change to the approved estimates is made under this section shall be charged on the general revenue notwithstanding that there has been no appropriation in respect thereof by an Appropriation Ordinance.

Supplementary Appropriation.

9. If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates.

PART III

CONTROL AND MANAGEMENT

General powers and duties of the Financial Secretary.

10. The Financial Secretary shall, subject to this Ordinance and any other enactment, have the management of the finances of the Government and the supervision, control and direction of all matters relating to the financial affairs of the Government.

Power to make regulations and give directions, etc.

11. (1) Without prejudice to any other provision of this Ordinance, the Financial Secretary may make such administrative regulations and give such administrative directions and instructions not inconsistent with this Ordinance as may appear to him to be necessary or expedient for the better carrying out of the provisions and purposes of this Ordinance and for the safety, economy and advantage of public moneys and Government property.

(2) Any regulations made or directions and instructions given by the Governor or by any person authorized by him, for purposes similar to those in respect of which regulations, directions and instructions may be made or given under subsection (1), and which are in force at the commencement of this Ordinance, shall, in so far as they are not inconsistent with this Ordinance, remain in force and shall be deemed for all purposes to have been made or given under this section and to be liable to revocation or amendment hereunder.

Controlling officers.

12. (1) Estimates of expenditure laid before the Legislative Council shall designate a controlling officer in respect of each head and subhead.

(2) Subject to section 14(5), a controlling officer shall be responsible and accountable for all expenditure from any head or subhead for which he is the controlling officer, and for all public moneys and Government property in respect of the department or service for which he is responsible.

Controlling officers to obey regulations and directions, etc.

13. Every controlling officer shall obey all regulations made and directions or instructions given by the Financial Secretary under section 11 and shall, if so required, account to the Financial Secretary for the performance of his duties as controlling officer.

Authority of controlling officers to incur expenditure.

14. (1) Subject to any regulations made or directions or instructions given by the Financial Secretary under section 11 and to any reservation made by the Financial Secretary under subsection (3), a controlling officer may, in accordance with this Ordinance, incur expenditure and authorize expenditure to be incurred against any provision shown in any subhead for which he is the controlling officer.

(2) No expenditure shall be incurred against any provision shown in any subhead except by or under the authority of the controlling officer.

(3) The Financial Secretary may, in writing, reserve the whole or any part of any provision shown in any subhead and for so long as such reservation remains in force no expenditure shall be incurred against the provision reserved.

(4) A controlling officer may, in respect of any subhead for which he is the controlling officer, by allocation warrant ~~under his hand~~ authorize any other controlling officer to incur expenditure or authorize expenditure to be incurred against any provision shown in that subhead—

(*a*) for any purpose within the ambit of that subhead; and

(*b*) in accordance with the terms of the allocation warrant.

(5) The controlling officer to whom an allocation warrant is issued under subsection (4) shall be responsible and accountable for any expenditure incurred under the warrant as if he were the controlling officer designated in respect thereof under section 12.

Further authority of controlling officers in respect of urgent expenditure.

15. (1) Where an urgent need has arisen for expenditure to be incurred which—

(*a*) requires a change to the approved estimates of expenditure in respect of matters referred to in section 8(2)(*b*) or (*d*); and

(*b*) in the opinion of a controlling officer cannot be deferred until the necessary change is made in accordance with section 8 without serious detriment to the public interest,

the controlling officer may, on his personal responsibility, incur the expenditure in anticipation of such change.

(2) As soon as practicable after incurring expenditure under subsection (1) the controlling officer shall report the matter to the Financial Secretary for the purpose of having the necessary change made to the approved estimates of expenditure.

(3) Where the necessary change to the approved estimates of expenditure is not made in accordance with section 8, the expenditure incurred shall not be charged on the general revenue but shall remain the personal responsibility of the controlling officer who incurred the expenditure.

PART IV

RECEIPT, PAYMENT AND CUSTODY OF PUBLIC MONEYS

Duties of Director of Accounting Services.

16. (1) The Director of Accounting Services shall be responsible for the compilation and supervision of the accounts of the Government, for the management of accounting operations and procedures, and for ensuring that all regulations, directions or instructions made or given under this Ordinance relating thereto and in respect of the safe custody of public moneys and its accounting are complied with.

(2) Without prejudice to the generality of his duties under subsection (1) and the powers conferred on the Financial Secretary by section 11 the Director of Accounting Services shall—

(*a*) ensure that adequate arrangements are made for bringing promptly and properly to account all public moneys received and paid by the Government;

(*b*) pay such sums from public moneys as he is authorized to pay under this Ordinance or any other enactment;

(*c*) ensure, in so far as is practicable, that adequate arrangements are made for the safe custody of public moneys; and

(*d*) bring to the notice of the Financial Secretary and the Director of Audit, in writing, any material defect in departmental control of revenue, expenditure, cash, stamps, securities, stores and other Government property which may come to his notice and any persistent breaches of regulations, directions or instructions made or given under this Ordinance.

(3) Subject to the provisions of any enactment, in the exercise of his duties the Director of Accounting Services shall be entitled to inspect all offices and shall have access to all records, books, vouchers, documents and receipts relating to public moneys and to all cash, stamps, securities, stores and any other Government property in the possession of any public officer.

(4) The Director of Accounting Services may, in writing, delegate to any public officer any of the powers conferred upon him by subsection (3).

Prompt collection of moneys.

17. Any public officer responsible for the collection of moneys due to the Government shall collect such moneys promptly and in full unless authorized by the Director of Accounting Services or under any enactment to defer collection or to arrange collection by instalments.

Payment of public moneys.

18. No public officer shall make any payment of public moneys unless he is authorized to do so—

(*a*) by warrant issued under section 19, 20, 21, 22 or 29 or by regulations, directions or instructions made or given under this Ordinance; or

(*b*) by any other enactment.

Payment of certain moneys to be authorized by warrant.

19. (1) Upon the coming into operation of an Appropriation Ordinance, the Financial Secretary shall authorize the Director of Accounting Services by general warrant under his hand to pay from the general revenue such sums as may be required to meet expenditure in accordance with that Ordinance.

(2) Upon the making by the Legislative Council of a resolution under section 7, the Financial Secretary shall authorize the Director of Accounting Services by vote on account warrant under his hand to pay from the general revenue such sums as may be required to meet expenditure in accordance with the resolution.

(3) Upon the making of a change to the approved estimates of expenditure in accordance with section 8, the Financial Secretary shall authorize the Director of Accounting Services by supplementary warrant under his hand to pay from the general revenue, in accordance with the change made, such sums as may be required to meet expenditure from any head in excess of the sum appropriated by the Appropriation Ordinance for that head.

Recoverable advances.

20. Subject to the provisions of any enactment, the Financial Secretary may, by advances warrant under his hand, authorize the Director of Accounting Services to pay from public moneys such sums as may be necessary for the purpose of making advances which are recoverable and the amount recovered in each case shall be set off against the sum advanced.

Advances to meet urgent need for payment.

21. (1) Subject to this section, where the Financial Secretary is satisfied that due to exceptional circumstances an urgent need has arisen for payment—

(*a*) to meet expenditure—

(i) for which no provision or insufficient provision is shown in the approved estimates of expenditure, whether or not such expenditure has been improperly incurred; or

(ii) not being expenditure referred to in sub-paragraph (i), which appears to the Financial Secretary to have been improperly incurred; and

(*b*) which cannot be deferred without detriment to the public interest,

he may by contingencies warrant under his hand authorize the Director of Accounting Services to pay from public moneys an advance of moneys to meet that need.

(2) Without prejudice to section 31, a contingencies warrant shall cease to have effect if—

(*a*) being a warrant issued in respect of expenditure referred to in subsection (1)(*a*)(i), the necessary change is made to the approved estimates of expenditure; or

(*b*) being a warrant issued in respect of expenditure referred to in subsection (1)(*a*)(ii), such expenditure is authorized by the Financial Secretary.

(3) Where under subsection (2) a contingencies warrant ceases to have effect the advance to which it relates shall be deemed to have been made for the purpose of a charge on the general revenue and shall be accounted for accordingly.

(4) A contingencies warrant shall specify a controlling officer who shall be personally responsible for the advance to which such warrant relates, unless such advance is charged on the general revenue in accordance with this Ordinance.

Imprests.

22. (1) The Financial Secretary may, by imprest warrant under his hand, and subject to such conditions as he may specify, authorize the Director of Accounting Services to issue imprests from public moneys to public officers.

(2) Any public officer in receipt of an imprest shall be personally liable for such imprest in accordance with such conditions as the Director of Accounting Services may specify and shall retire the imprest when required to do so by the Director of Accounting Services.

(3) Where an imprest is not duly retired, the Director of Accounting Services may, notwithstanding the provisions of any other enactment, deduct the amount or any part thereof from any moneys of any description, including salary, wages, pension or other emoluments payable, or which may become payable, by the Government to the officer to whom the imprest was issued.

(4) Nothing in this section shall affect the right of the Government, which is hereby declared, to—

(*a*) sue the person to whom the imprest was issued for the recovery of the amount of any imprest not duly retired or any part thereof, as a civil debt due to the Government; or

(*b*) sue any person for the recovery of any amount as a civil debt notwithstanding that a person may be personally liable for part or all of the amount under this section.

Deposits.

23. (1) Except where otherwise provided under any enactment or authorized by the Director of Accounting Services, any moneys raised or received by the Government, not being moneys raised or received for the purposes of the Government and not being a donation or grant referred to in section 24, shall be deposited with the Director of Accounting Services.

(2) Except where otherwise provided under any enactment or authorized by the Director of Accounting Services, any moneys deposited under subsection (1) (hereinafter in this section referred to as a deposit) shall not form part of the general revenue and shall not be applied in any way for the purposes of the Government, but shall in all other respects be received and accounted for and otherwise dealt with as public moneys.

(3) Notwithstanding anything in subsection (2), the Financial Secretary in his discretion may authorize the investment of any deposit in such manner as he may determine, and any interest or dividend received in respect of any deposit so invested shall form part of the general revenue.

(4) A deposit which is unclaimed for 5 years may be treated as moneys received for the purposes of the Government and, if so treated, shall form part of the general revenue.

(5) Where under subsection (4) a deposit forms part of the general revenue any person entitled thereto may, within 6 years after the date on which the moneys become part of the general revenue, claim for a refund.

Donations and grants.

24. (1) Without prejudice to the provisions of any other enactment, any donation or grant of moneys received by any public officer in the course of his duties or by virtue of his being a public officer, not being public moneys and not being received pursuant to any other enactment, shall be reported to the Financial Secretary.

(2) Every donation or grant referred to in subsection (1) shall be accounted for and expended in accordance with such instructions as the Financial Secretary may give.

Banking.

25. Except where otherwise provided under any enactment, no public officer in the course of his duties shall open an account or otherwise deposit any moneys at any bank or other financial institution without the authority in writing of the Financial Secretary or an officer authorized by him in writing for the purposes of this section.

Investment of moneys.

26. (1) Subject to the provisions of any enactment, the Financial Secretary in his discretion may authorize the investment of moneys forming part of the general revenue in such manner as he may determine.

(2) All investments made under this section together with any interest or other sums received therefrom shall form part of the general revenue.

(3) Subject to the provisions of any enactment, all investments held by or on behalf of the Government at the commencement of this Ordinance and forming part of the general revenue shall be deemed to have been made under this section.

Borrowing powers and loans.

27. (1) Subject to subsection (2) the Government shall not borrow money except in accordance with an Ordinance.

(2) Notwithstanding the provisions of any other enactment, the Financial Secretary may borrow by means of advances from the Crown Agents or from any bank, by means of a fluctuating overdraft or otherwise, such sums as may be required to meet day to day payments and any interest or service charges in respect of such sums shall be charged on the general revenue.

Guarantees.

28. (1) No public officer shall give a guarantee involving any financial liability upon the Government unless such guarantee is given—

(*a*) for the purposes of and in accordance with the provisions of an Ordinance or a resolution of the Legislative Council; or

(*b*) with the prior approval of the Finance Committee.

(2) No guarantee given in contravention of subsection (1) shall be binding on the Government.

Establishment of funds.

29. (1) The Legislative Council may by resolution provide for the establishment of funds to which moneys appropriated for the purpose may be credited and from which moneys may, under the authority of a funds warrant issued by the Financial Secretary, be expended for the purposes for which the funds were established subject to such conditions, exceptions and limitations as may be specified in the resolution.

(1A) (2) Unless an Ordinance or a resolution made under subsection (1) otherwise provides, the earnings from interest or dividends on investments of funds established under this section shall not be retained for the purposes of such funds, but shall form part of the general revenue.

First Schedule.

(3) The funds set out in the First Schedule shall be deemed to have been established in accordance with this section, and subsection (2) shall apply in respect thereof.

Special suspense accounts.

30. (1) The Legislative Council may by resolution approve the establishment of a suspense account (in this section referred to as a special suspense account) for the purposes of any commercial or industrial activity carried on by or on behalf of the Government and specified in the resolution, subject to such conditions and limitations as may be specified in the resolution.

(2) Unless a resolution made under subsection (1) otherwise provides, any moneys in a special suspense account which in the opinion of the Financial Secretary are in excess of the amount reasonably required for the purposes of the account, shall not be retained therein but shall form part of the general revenue.

Second Schedule.

(3) The suspense accounts set out in the Second Schedule shall be deemed to be special suspense accounts established in accordance with this section, and subsection (2) shall apply in respect thereof.

Appropriations and warrants to lapse at close of financial year.

31. Every appropriation by the Legislative Council from the general revenue for the service of any financial year and every warrant issued under the provisions of this Ordinance shall lapse and cease to have effect at the close of that financial year.

PART V

SURCHARGE

Power to surcharge.

32. (1) If, at any time, it appears to the Financial Secretary that any person who is or was employed as a public officer—

(*a*) has failed to collect any moneys owing to the Government for the collection of which he is or was at the time of such employment responsible;

(*b*) is or was at the time of such employment responsible for any improper payment of public moneys or for any payment of public moneys which is not duly vouched;

(*c*) has improperly incurred expenditure at the time of such employment;

(*d*) is or was at the time of such employment responsible for any deficiency in or loss or destruction of or damage to any public moneys, stamps, securities, stores or other Government property; or

(*e*) is or was at the time of such employment responsible for any loss or destruction of or damage to any property as a result of which the Government is liable for the cost of replacement or repair or for the payment of compensation,

and, if, within a period specified by the Financial Secretary, an explanation satisfactory to him is not furnished with regard to such failure to collect, improper payment, payment not duly vouched, expenditure improperly incurred, deficiency, loss, destruction or damage, as the case may be, the Financial Secretary may, without prejudice to the provisions of any other enactment relating to the surcharge (however called) of a public officer, but subject to subsections (2) and (3), surcharge the person such sum as he may determine.

(2) Notwithstanding anything in subsection (1), the Financial Secretary shall not surcharge a person under subsection (1) unless he

is satisfied, in all the circumstances of the case including, without limiting the generality of the foregoing, the nature of any disciplinary proceedings which may have been or may be taken against such person, that it is fair and reasonable to do so.

(3) In determining the sum to be surcharged under subsection (1)—

(*a*) the Financial Secretary shall take due account of the ability of the person surcharged to pay the surcharge without undue financial hardship; and

(*b*) the sum of the surcharge shall not in any case exceed the amount of the moneys not collected, or of the improper payment, or payment not duly vouched, or of the expenditure improperly incurred or of the deficiency, or the value of the loss, destruction or damage, or the cost of replacement, repair or compensation, as the case may be.

Notification of surcharge and right of appeal.

33. The Financial Secretary shall cause the person surcharged, the head of his Department, the Director of Accounting Services and the Director of Audit to be notified in writing of the surcharge made under section 32 and shall at the same time cause the person surcharged to be notified in writing of his right to appeal under section 34.

Appeal against surcharge.

34. (1) Any person aggrieved by any surcharge made against him under section 32 shall have the right to appeal to the Governor within a period of 30 days (or such longer period as the Governor after consultation with the Financial Secretary may allow) after the date on which he is notified of the surcharge.

(2) The Governor in his discretion, after making or causing to be made such investigation as he may deem to be necessary, may confirm the surcharge or direct that the person surcharged be released wholly or in part from the surcharge as may appear to him to be fair and reasonable.

Withdrawal of surcharge.

35. The Financial Secretary may at any time withdraw any surcharge in respect of which a satisfactory explanation is received or if it otherwise appears to him that no surcharge should have been made and in any such event the Financial Secretary shall notify in writing the person concerned, the head of his Department, the Director of Accounting Services and the Director of Audit of such withdrawal.

Collection of surcharge.

36. (1) Subject to subsections (2) and (3) the Director of Accounting Services on being notified of a surcharge made under section 32, shall cause the amount of the surcharge to be collected from the person surcharged in accordance with such directions as the Financial Secretary may give.

(2) Notwithstanding the provisions of any other enactment, where moneys of any description including salary, wages, pension or

other emoluments, are payable or may become payable by the Government to the person surcharged, the Financial Secretary may require the amount of any surcharge imposed on that person to be deducted from such moneys in whole or in part as he considers fair and reasonable.

(3) Notwithstanding anything in subsections (1) and (2)—

(*a*) the total amount of any deduction from the monthly salary, wages or pension of the person surcharged in any month shall not exceed one half of the gross amount of the salary, wages or pension payable for that month;

(*b*) no collection of a surcharge shall be made until after the expiration of the period allowed by section 34 for the lodging of an appeal; and

(*c*) where the person surcharged appeals under section 34, no collection of the surcharge shall be made until and unless the amount of the surcharge has been confirmed or otherwise determined in accordance with the provisions of that section.

(4) Nothing in this section shall affect the right of the Government, which is hereby declared, to—

(*a*) sue the person surcharged for the recovery of the amount of any surcharge as a civil debt due to the Government; or

(*b*) sue any person for the recovery of any amount as a civil debt notwithstanding that a person may be subject to a surcharge in respect of part or all of that amount.

Surcharge in respect of deceased persons.

37. (1) Where a person referred to in section 32 dies at any time before or after he is surcharged under that section, the Financial Secretary may surcharge the personal representative of such person and the provisions of this Part shall thereupon apply to the personal representative as respects the estate of the deceased person as they would have applied to the deceased person if he were alive.

(2) For the purposes of this section "personal representative" means the executor or administrator for the time being of a deceased person.

PART VI

MISCELLANEOUS

Abandonment of claims, etc. and write-off of public moneys and stores. (Cap. 1.)

38. (1) Without prejudice to section 96 of the Interpretation and General Clauses Ordinance, the Financial Secretary, subject to, in any case involving fraud or negligence, any conditions, exceptions or limitations specified by the Finance Committee, may—

(*a*) abandon, remit or waive any claims by or on behalf of the Government;

(*b*) write off arrears of revenue;

(*c*) write off losses or deficiencies of public moneys, stamps, securities or stores; and

(*d*) write off condemned, unserviceable or obsolete stores or other movable property belonging to or provided by the Government.

(2) The Financial Secretary may in writing delegate to any public officer any of the powers conferred upon him by subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

Disposal of serviceable stores, etc.

39. (1) Subject to the provisions of any enactment, and to any conditions, exceptions or limitations specified by the Finance Committee, the Financial Secretary may authorize the gift of serviceable Government stores or other property to any institution or organization where it is in the public interest to do so.

(2) The Financial Secretary may in writing delegate to any public officer any power conferred upon him by subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

Power of Governor to give directions.

40. (1) The Governor may give to the Financial Secretary and the Director of Accounting Services such directions as he thinks fit with respect to the exercise or performance of their respective powers, functions and duties under this Ordinance, either generally or in any particular case.

(2) The Financial Secretary and the Director of Accounting Services shall, in the exercise or performance of their respective powers, functions and duties under this Ordinance, comply with directions given by the Governor under subsection (1).

40A

Trusts.

41. Nothing in this Ordinance shall extend to, abridge or alter the terms of any trust or shall be construed as authorizing the making of any regulations or the giving of any directions or instructions requiring any person to obey such regulations, directions or instructions in relation to moneys held on trust which contravene or are inconsistent with the terms of such trust.

Transitional.

42. (1) Any estimates of revenue and expenditure of the Government laid before the Legislative Council prior to the commencement of this Ordinance, which—

(*a*) relate to the first financial year in respect of which this Ordinance comes into operation; and

(*b*) could have been laid under section 5,

shall be deemed to have been laid under that section.

(2) Any resolution of the Legislative Council authorizing expenditure for the services of the Government in advance of an Appropriation Ordinance, which—

(*a*) relates to the first financial year in respect of which this Ordinance comes into operation;

(*b*) is, immediately prior to the commencement of this Ordinance, not spent; and

(*c*) could have been made under section 7,

shall be deemed to have been made under that section.

(3) Nothing in this Ordinance shall affect any investigation, administrative or legal proceeding or remedy in respect of a surcharge imposed prior to the commencement of this Ordinance and any such investigation, administrative or legal proceeding may be instituted, continued and enforced as if this Ordinance had not been passed.

A3.

FIRST SCHEDULE [s. 29.]

FUNDS

Development Loan Fund
Lotteries Fund
16/6/1988 ~~Home Ownership Fund~~
Student Loan Fund
Mass Transit Fund
Capital Works Reserve Fund

SECOND SCHEDULE [s. 30.]

SPECIAL SUSPENSE ACCOUNTS

Financial Secretary Incorporated ~~Colonial Treasurer Incorporated~~ Suspense Account
Special Coin Suspense Account