

## 第二章 法定監警會 的成立

## Chapter 2 Establishment of Statutory IPCC

### 《監警會條例》於2009年6月1日 生效

- 2.1 《監警會條例》於2008年7月獲立法會通過，把投訴警察制度條文化，並為法定監警會的運作提供法理依據。保安局局長其後指定2009年6月1日為《監警會條例》的實施日期。
- 2.2 法定前的警監會就《〈監警會條例〉（生效日期）公告》及《2009年〈監警會條例〉（生效日期）（第2號）公告》，出席了四次立法會小組委員會會議。會上，警監會向議員簡介有關成立法定監警會的財政和人手安排，以及籌備工作的進度。
- 2.3 政府當局在會上再次向議員保證會致力協助法定監警會履行監察警方處理和調查須匯報投訴的工作，以及確保法定監警會將繼續獲得適當的支援和資源。

### 轉為法定機構的籌備工作和 優化措施

- 2.4 為配合《監警會條例》的實施，法定前的警監會已著手部署所需安排，以落實法定的要求。

### 審核調查報告

- 2.5 委員會檢視並修訂了審核須匯報投訴調查報告的程序，清楚列明監察過程的每一個步驟（見附錄I）。

### 報告格式和內容

- 2.6 《監警會條例》第17(2)(b)條訂明，須匯報投訴的調查報告必須載有就有關投訴所作的對事實的裁斷，及支持該裁斷的證據。

### Commencement of IPCC Ordinance on 1 June 2009

- 2.1 The IPCCO was enacted in July 2008 to codify the then existing police complaints system and provide a statutory basis for IPCC to operate. The Secretary for Security subsequently appointed 1 June 2009 as the day when IPCCO would come into operation.
- 2.2 In connection with the IPCCO (Commencement) Notice and IPCCO (Commencement) (No. 2) Notice 2009, IPCC attended four meetings of the LegCo subcommittee. During the meetings, IPCC briefed legislators on the financial and staffing arrangements as well as progress of preparatory work relating to the establishment of statutory IPCC.
- 2.3 During the meetings, the Administration reassured legislators that it was committed to facilitating IPCC to discharge its functions of monitoring the Police's handling and investigation of RCs, and to ensuring that the statutory IPCC would be provided with appropriate support and resources.

### Preparation for Incorporation and Enhancement Measures

- 2.4 In connection with the coming into operation of IPCCO, IPCC had taken steps to put in place necessary arrangements to reflect the statutory requirements.

### Examination of Investigation Reports

- 2.5 The procedures on vetting of investigation reports on RCs were reviewed and revised to set out clearly steps involved in the monitoring process (see Appendix I).

### Report Format and Contents

- 2.6 Section 17(2)(b) of IPCCO states that an investigation report of an RC must contain, among other things, a finding of facts in relation to the complaint and the evidence in support of the finding.

- 2.7 《監警會條例》實施前，並沒有明確規定投訴警察課調查投訴時必須要對事實作出裁斷。那時，每當投訴人和被投訴人各執一詞，而又沒有其他獨立證人或佐證，投訴警察課往往以不能證明或推翻任何一方的說法為理由，將調查結果列為「無法證實」。
- 2.8 監警會認為，這樣一概而論的分類做法並不符合要達至對事實作出裁斷的法定要求。當遇到投訴人和被投訴人有不同版本的證供，調查結果並不一定被列為「無法證實」。投訴警察課應盡力分析投訴人、被投訴人和其他證人的證供，以及評估各人的可信程度，才決定其證供應否被接納。
- 2.9 鑒於監警會的關注和意見，投訴警察課同意進行更徹底的分析，修訂調查報告的格式和陳述方式，特別加入對事實作出裁斷的部分，確保符合《監警會條例》第17(2)(b)條的要求。
- 2.10 在調查過程中強調了必須對事實作出裁斷後，指控被列為「無法證實」的比例有所下降：2009年，在1,194項經全面調查的指控中，有597項（即50%）被列為「無法證實」；2008年，在1,159項經全面調查的指控中，有754項（即65%）被列為「無法證實」。
- 2.7 Before the coming into operation of IPCCO, there was no explicit requirement for CAPO to arrive at a finding of facts in complaints investigation. At that time, when conflicting versions of events were presented by the complainant and the complainee and in the absence of independent witness or corroborative evidence, CAPO would very often classify the investigation results as “Unsubstantiated” on the ground that it could not prove or disprove either party’s version.
- 2.8 IPCC considered this way of arriving at the classification too generalised and did not meet the statutory requirement of arriving at a finding of facts. The investigation results should not necessarily be classified as “Unsubstantiated” simply because of conflicting evidence produced by complainants and complainees. Instead, CAPO should endeavour to analyse the evidence given by complainants, complainees, as well as witnesses, and assess each one’s credibility and how much weight to be attached to evidence provided by each party.
- 2.9 In the light of IPCC’s concern and advice, CAPO agreed to conduct more thorough analysis, revise the format and presentation of investigation reports, and that in particular the finding of facts should be included in the reports to ensure compliance with the requirement as stipulated under section 17(2)(b) of IPCCO.
- 2.10 A smaller proportion of allegations were classified as “Unsubstantiated” after attempts were made to establish findings of facts. In 2009, 50% (597 out of 1,194) fully investigated allegations were classified as “Unsubstantiated”, whereas the figure in 2008 was 65% (754 out of 1,159).

### 投訴歸類

- 2.11 根據《監警會條例》第10、11和14條，投訴可分為三類：須匯報投訴、須知會投訴和其他投訴（既非須匯報投訴，亦非須知會投訴）。

### Categorisation of Complaints

- 2.11 By virtue of sections 10, 11 and 14 of IPCCO, complaints are divided into three categories: reportable complaints (RCs), notifiable complaints (NCs) and other complaints (neither RCs nor NCs).

2.12 《監警會條例》第11(c)條訂明，須匯報投訴的投訴人必須是因警務人員不當行為而受直接影響的人士（或其代表）。投訴警察課認為，若警務人員的行為或言詞不是直接向投訴人作出，投訴人便不是受直接影響的人士，故此，他的投訴不會被歸類為須匯報投訴。不過，監警會則認為應取決於投訴人的利益是否因而受到直接影響。不論投訴人當時是否在场、是否聽到有關言詞、或有關行為是否直接向他作出，只要他的利益因而受到直接影響，他便是受直接影響的人士。

2.13 投訴警察課同意監警會的觀察和意見。

### 進行觀察

2.14 監警會就《監警會條例》第33至38條有關觀察員計劃的條文，檢視和修訂了相關的程序和指引，以反映法定的要求。

2.15 《監警會條例》第37條規定觀察員進行觀察後必須向監警會呈交報告。條例亦規定如觀察員知悉他在有關須匯報投訴中有利害關係，必須披露其利害關係的性質、退出有關觀察和向監警會報告其利害關係的性質。鑒於條例的規定，監警會修訂了觀察員報告的格式，要求觀察員指出在觀察過程中是否察覺有不當的情況、申報他們在個案中有否利害關係、有否披露其利害關係的性質和退出有關的觀察。

2.16 為了加深觀察員了解他們在《監警會條例》下的角色，監警會與投訴警察課於2009年5月26日合辦簡介會，有超過30名監警會委員和觀察員出席。簡介會介紹了經修訂的程序和指引，並重點講述觀察員在進行觀察有關須匯報投訴的會面和證據收集時的法定權利和責任。

2.12 As stipulated in section 11(c) of IPCCO, a complainant of an RC should be the person (or his representative) directly affected by the police misconduct. CAPO took the view that if the police action was not directly taken on the complainant or the police's comment was not communicated or addressed direct to the complainant, then the complainant should not be considered as directly affected and hence the complaint should not be categorised as RC. However, IPCC considered that the essential point to consider should be whether the complainant's interest was directly affected by the police conduct, no matter whether he was present on the spot, had heard the remarks, or whether the police action was directed to him.

2.13 IPCC's observation and comments were agreed by CAPO.

### Conduct of Observations

2.14 In the light of sections 33 to 38 of IPCCO, IPCC has reviewed and revised the relevant procedures and guidelines of the Observers Scheme to reflect the statutory provisions.

2.15 Section 37 of IPCCO provides that an Observer must submit a report to IPCC after the conduct of observation. This section also provides that if an Observer has an interest in an RC, he must disclose the nature of his interest, withdraw from the observation and report the nature of his interest to IPCC. In view of this, IPCC has revised the Observers Report Form to request Observers to indicate whether there are any irregularities detected in the course of observation, and to declare whether they have any interest in the case, and whether they have disclosed the nature of interest and withdrawn from the observation.

2.16 To enhance Observers' understanding of their role under IPCCO, IPCC and CAPO co-organised a briefing on 26 May 2009. Over 30 IPCC Members and Observers attended. The revised procedures and guidelines were introduced, highlighting Observers' statutory rights and duties in observations on conduct of interviews and collection of evidence in connection with RCs.

監警會與投訴警察課  
合辦之觀察員簡介會。  
Briefing for Observers  
co-organised by IPCC  
and CAPO.



2.17 監警會秘書處亦於2009年9月29日為新委任的觀察員舉行簡介會，加深他們對投訴警察制度和觀察員計劃運作的認識。

2.17 The IPCC Secretariat also conducted a briefing for newly appointed Observers on 29 September 2009 to familiarise them with the police complaints system and operation of the Scheme.

2.18 監警會一向鼓勵委員和觀察員進行更多觀察，特別是突擊觀察。進行觀察的數字由2008年的548次，大幅上升至2009年的1,808次（包括331次突擊觀察）。2010年首季進行觀察的次數持續增加，共有426次。

2.18 IPCC has always encouraged Members and Observers to conduct more observations, especially surprised ones. The number of observations increased substantially from 548 in 2008 to 1,808 in 2009, including 331 surprise observations. The figure has continued to grow in the first quarter of 2010, with a total of 426 observations conducted.

### 進行會面

### Conduct of Interviews

2.19 根據《監警會條例》第20和21條的規定，監警會檢視和修訂了規範監警會進行會面的內部指引和程序，主要修訂包括更清晰地列明誰人可在會面時在場，以及規定會面前準備、進行會面時和完成會面後的每一步安排，如保存會面紀錄等。

2.19 Pursuant to sections 20 and 21 of IPCCO, the internal guidelines and procedures governing the conduct of IPCC interviews were reviewed and revised. Major changes include setting out in clearer terms who may be present at interviews and the detailed procedural arrangements governing each step involved from preparation before the interview, in the conduct of the interview, and the post-interview arrangements such as keeping record of interview.

2.20 此外，修訂指引亦加強了申報利害關係的要求，包括規定獨立證人和專家證人必須申報利害關係。

2.20 Besides, the declaration of interest requirement has been strengthened. The revised guidelines provide for declaration of interest of independent witness and expert witness.

2.21 本報告期內（由2009年至2010年3月31日），監警會共邀請了11名人士（5名投訴人、5名被投訴人和1名警方證人）出席會面。期內，共進行了5次會面，其他的會面則有待安排。

### 執行會務

2.22 監警會就《監警會條例》附表1的規定，檢視和修訂了執行會務的安排，包括會議的處事程序、會議的法定人數、在會議上或會議之外決定事宜的規則、委員申報利害關係的安排、在監警會之下成立委員會及其運作、監警會轉授職能的範圍和監警會財政管理等。

### 專責小組

2.23 監警會成立的一個特設專責小組，就法定監警會如何更好地安排會議的進行提供意見。專責小組成員包括主席翟紹唐先生、副主席石禮謙議員、委員徐福樂醫生、杜國鎣先生、吳克儉先生和方敏生女士。

2.24 專責小組檢視了監警會/投訴警察課聯席會議和監警會內務會議於同日進行這行之已久的做法。專責小組認為，過於緊密的議程可能窒礙會議的討論，故此建議引入改變。

2.25 監警會考慮了專責小組的建議，由2009年7月起，聯席會議（閉門及公開部分）和內務會議分別在不同的日子進行。聯席會議由每兩個月改為每季舉行一次，內務會議則每兩個月舉行一次或按需要更頻密地舉行。

2.26 新採納的會議模式讓監警會與投訴警察課在聯席會議上有更多時間就政策議題交換意見。在聯席會議的公開部分會討論具爭議性和公眾關注的政策議題和個案，藉以提高透明度和公眾對監警會工作的認識。

2.21 During this reporting period (from 2009 to 31 March 2010), IPCC invited 11 persons (5 complainants, 5 complainees and 1 police witness) to attend interviews. A total of 5 interviews were conducted during this reporting period and some were pending arrangement.

### Conduct of Council Business

2.22 In the light of Schedule 1 of IPCCO, IPCC has reviewed and revised the conduct of Council business, including rules on proceedings of meetings, quorum for meetings, rules for determination of matters at meetings and outside meetings, arrangements for declaration of interest by Members, establishment of committees under IPCC and their operation, the scope of delegation of IPCC's functions as well as the financial management of IPCC.

### Task Force

2.23 An ad hoc Task Force, comprising the Chairman Mr JAT Sew-Tong, Vice-Chairman Hon Abraham SHEK, and Members Dr Michael TSUI, Mr Clement TAO, Mr Eddie NG and Ms Christine FANG, was set up to thrash out ideas on how best the statutory IPCC should arrange its meetings.

2.24 The Task Force reviewed the long-established practice of conducting the Joint IPCC/CAPO meetings and the IPCC In-house meetings on the same day. The Task Force considered the schedule too tight which might impede discussion at meetings, and thus proposed a change to it.

2.25 On the recommendation of the Task Force, IPCC had, starting from July 2009, held Joint meetings (closed part and open part) on a day separate from the In-house meetings. The former would be held quarterly instead of bi-monthly, whereas the latter would be conducted bi-monthly or as frequently as required.

2.26 The new meeting mode would allow more time for IPCC and CAPO to exchange views on policy issues at Joint meetings. Policy issues or cases which are controversial and of public concern would be discussed at the open part of the Joint meetings to enhance transparency and public understanding of IPCC's work.



### 與投訴警察課的溝通模式

- 2.27 監警會在大致行之有效的審核調查報告的模式下，再引入一個三層的制度，以期加快處理未能結案的投訴。
- 2.28 第一層：監警會秘書處和投訴警察課會視乎需要，舉行工作層面會議，就未能結案的投訴解決分歧。第二層：若秘書處和投訴警察課未能達成共識，監警會委員會加入參與會議。第三層：若不果，有關的個案會安排在監警會/投訴警察課聯席會議上議決。若雙方仍然未能達成共識，監警會將考慮不通過個案的調查結果、公開監警會的意見，和/或把個案報告行政長官。

### 資源

- 2.29 2009/10年度，監警會獲撥款2,830萬元，較2008/09的修訂預算增加了1,050萬元，增幅是59%，當中包括聘用人手的開支。法定監警會成立前，有關的開支是由政府直接支付。增加的撥款讓法定監警會自行聘請員工以逐步取代借調的公務員，應付在監警會成為法定機構前原來由其他政府部門提供的服務的運作開支，以及採購設備和進行小型維修保養工程。監警會運用政府當局增撥的資源，成立第四隊審核小組（由一名高級審核主任和一名審核主任組成），以加強法定監警會審核調查報告的能力；另外亦增設了一個高級經理（財務及一般事務）職位，以監督財務管理和一般支援工作。這些工作在監警會成為法定機構前原來由政府部門負責。

### Communication Mode with CAPO

- 2.27 While the modus operandi of examining investigation reports had been working effectively by and large, IPCC further adopted a three-tier system with a view to speeding up the processing time of unresolved cases.
- 2.28 At the first level, the IPCC Secretariat and CAPO would convene working level meetings on a need basis to sort out differences on outstanding cases. The second level meeting, with participation of IPCC Members, would be convened if the Secretariat and CAPO failed to come to an agreement. If attempts made to resolve the case were unsuccessful, the outstanding cases would be brought to the Joint IPCC/CAPO meeting for a decision. If cases still could not be resolved, IPCC might decide not to endorse the investigation results of the case, make public IPCC's views, and/or bring the case to the attention of CE.

### Resources

- 2.29 A provision of \$28.3 million was allocated to IPCC in 2009/10, representing an increase of \$10.5 million or 59% compared with the revised estimate for 2008/09. The additional provision included provision for the on-costs of staffing which, prior to establishment of the statutory body, was funded centrally by the Government. The increase in provision enabled the statutory IPCC to employ its own staff upon phasing out of the seconded civil servants, to meet the operating expenses of services which had been provided by government departments before incorporation, and to procure equipment and carry out minor maintenance works. With the additional resources provided by the Administration, a fourth vetting team, comprising a Senior Vetting Officer and a Vetting Officer, was established to strengthen the statutory IPCC's ability in vetting investigation reports; and another post of Senior Manager (Finance and General) was also created to oversee finance administration and general support work previously undertaken by government departments before incorporation.

## 招聘人手

- 2.30 《監警會條例》第6條賦予法定監警會權力去聘請員工以逐步取代借調到秘書處工作的公務員。監警會為了聘請合適的人選取代借調的公務員，進行了多次招聘活動。公開招聘的渠道包括在本地報章和監警會網頁刊登廣告。
- 2.31 截至2010年3月31日，在28人的編制中，已有15名公務員被調離秘書處，其空缺由監警會聘請的員工填補。監警會會視乎運作經驗，不斷檢視對人手的需求。

## 內部行政

- 2.32 為符合《監警會條例》第6條有關監警會可委任其僱員的權力，和附表1規管財務事宜的條文，監警會需要制定規則和指引以適當地管理員工聘任、行政和財務的事宜。
- 2.33 監警會制定了管理人力資源、財務及會計、採購、資訊科技保安的內部手冊，列出有關的政策和程序，以履行其法定職能和責任。
- 2.34 監警會決定並製備監警會法團印章，亦因應新的法定地位和中文名稱，修改了機構標誌、辦公室招牌、印製新文具和更新其他相關物品。

## Recruitment

- 2.30 Section 6 of IPCCO empowers the statutory IPCC to appoint its own staff to gradually replace the seconded civil servants working in the Secretariat. A number of recruitment exercises were held to select suitable persons for appointment to replace the seconded civil servants. Open recruitment exercises were conducted with advertisements placed in local newspapers and on IPCC website.
- 2.31 As at 31 March 2010, out of the total staffing complement of 28, 15 civil servants have already been phased out and replaced by IPCC's own staff. IPCC would keep under review the staffing requirements in the light of operational experience.

## Internal Administration

- 2.32 Pursuant to section 6 of IPCCO which provides that IPCC may appoint its own staff and provisions in Schedule 1 which governs the finances matters, it was necessary for IPCC to draw up rules and guidelines with a view to properly managing its recruitment of staff, administration and finances.
- 2.33 Internal manuals on management of human resources, finance and account, procurement, IT security, were drawn up which set out policies and procedures in order to discharge IPCC's statutory duties and responsibilities.
- 2.34 IPCC agreed on and produced a common seal for the statutory IPCC. The corporate signature, office signage, stationery and other related materials were also revamped to reflect the new statutory status as well as its new Chinese name.





### 宣傳

- 2.35 監警會製備並向公眾派發一系列新的宣傳物品，包括海報、小冊子和單張。這些宣傳品除了擁有新的設計和外觀，在內容上亦有修訂，向公眾介紹監警會在《監警會條例》下的新地位和職能。
- 2.36 監警會網頁亦相應更新，擁有新的外觀，提供監警會最新的資訊和投訴警察制度的資料。網頁的組織亦作重新編排，讓公眾更快捷和容易地取得所需的資訊。

### Publicity

- 2.35 A new series of publicity materials, including posters, booklets and leaflets, was produced for distribution to the public. Apart from the new design and outlook, the contents of the publications were revised to introduce to the public IPCC's new status and functions as provided for under IPCCO.
- 2.36 The IPCC website was revamped with a fresh look and up-to-date information and news about the Council and the police complaints system. The structure of the website was also re-organised to allow quick and easy access to the information required.



01 港鐵沿線的宣傳廣告。  
Advertisements on MTR networks.

02 監警會在明報刊登的廣告文章。  
IPCC advertorial published in Ming Pao.

03 放置於投訴警察報案中心的監警會宣傳展板。  
IPCC display panel at Complaints Against Police Reporting Centre.



2.37 監警會於2009年6月在港鐵沿線推出為期四星期的廣告宣傳活動，在列車車箱內放置監警會的橫幅廣告，向市民宣傳法定監警會的成立。

2.38 明報亦於2009年6月1日刊登了半頁的廣告文章，旨在向公眾介紹法定監警會的角色及職能，以加深公眾對投訴警察制度的認識和信心。

2.39 投訴警察報案中心和不同地區的報案室均放置了宣傳監警會的展板，向有興趣的人士提供資訊和宣傳監警會。

2.40 為慶祝法定監警會成立，監警會於2009年6月1日舉行了一個酒會，蒞臨分享喜悅的嘉賓包括多名前任和現任的主席和委員、政府當局高層官員、警隊高層人員和立法會議員。

2.37 A four-week advertising campaign was mounted on MTR networks in June 2009 with IPCC banners posted in train compartments to draw public attention to the establishment of statutory IPCC.

2.38 A half-page advertorial was published in Ming Pao on 1 June 2009. The article introduced to the public the role and functions of statutory IPCC, with a view to enhancing public understanding of and confidence in the police complaints system.

2.39 Display panels were placed in Complaints Against Police Reporting Centre and Report Rooms in different regions to provide information to our stakeholders and promote IPCC.

2.40 In celebration of the establishment of statutory IPCC, the Council hosted a drinks party on 1 June 2009. Former and incumbent Chairmen and Members, senior officials from the Administration and the Police Force, and LegCo members were among the guests attending the party to share the joy.



01 主席翟紹唐先生(左)與前主席鄧國楨法官(右)  
Mr JAT Sew-Tong, Chairman (left) and Hon Mr Justice Robert TANG Ching, former Chairman (right).



02 左起：委員阮陳淑怡博士、前副主席梁家傑議員、警務處助理處長(服務質素)黃福全先生、委員謝德富醫生。  
From left: Dr Helena YUEN, Member, Hon Alan LEONG, former Vice-Chairman, Mr Vincent WONG, Assistant Commissioner of Police (Service Quality) and Dr TSE Tak-fu, Member.



03 左起：保安局副秘書長丁葉燕薇女士、涂謹申議員、主席翟紹唐先生、保安局常任秘書長張琮瑤女士、副主席石禮謙議員。  
From left: Mrs Jessie TING, Deputy Secretary for Security, Hon James TO, Mr JAT Sew-Tong, Chairman, Ms CHANG King Yiu, Permanent Secretary for Security, Hon Abraham SHEK, Vice-Chairman.

04 警務處副處長任達榮先生(左四)和曾偉雄先生(左二)出席慶祝法定監警會成立的酒會。  
Deputy Commissioners of Police Mr Peter YAM (4th from left) and Mr Andy TSANG (2nd from left) attend the drinks party in celebration of the establishment of statutory IPCC.

05 委員與政府當局和警隊的嘉賓合照。  
Group photo of Members and guests from the Administration and the Police Force.



2.41 監警會在本報告期內的其他宣傳及對外與相關人士的交流活動刊載於第五章。

2.41 More details of IPCC's publicity initiatives and external communication with stakeholders during this reporting period can be found in Chapter 5.