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30 October 2004

Ms Kitty Cheng
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
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[Fax: 2877 5029]

Dear Ms Cheng,

Vocational Training Council (Amendment) Bill

I refer to your letters of 7 and 13 January on the captioned subject.

Revised Bill

In these letters, you have asked questions on the object and implications of Clause 4 of the Bill and how it is related to the use of public money by the Vocational Training Council (VTC) when conducting extra-territorial activities. In light of your questions, to better reflect our policy intention, we have revised Clause 4 of the Bill which is now enclosed herewith for your reference. We consider that the revised Clause 4 has adequately addressed the various issues raised in your letters except the one in relation to the territorial limit under the existing section 5 of the Vocational Training Council Ordinance (Cap 1130).

Territorial limit

In respect of item 1 of your letter of 13 January which seeks to clarify the interpretation of the territorial limit in the existing section 5 and how it should be applied when reading in conjunction with the next sections introduced under Clause 4 of the Bill, our legal rationale is as follows -

- (a) the basic principle is that words of written or unwritten law expressed in general terms are taken to be subject to an implied limitation which confines their effect to the territorial jurisdiction;
- (b) if a piece of legislation is intended to have extra-territorial effect, there must be clear provision in the legislation to displace the presumption that legislature does not intend to exceed its jurisdiction;
- (c) there is nothing in Cap. 1130 to suggest that the aforesaid presumption is to be displaced.

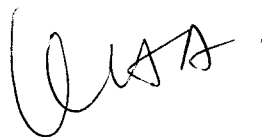
There is no provision in the existing section 5 and section 6 of Cap. 1130 that suggests that the VTC may perform its function or carry out activities in a place outside Hong Kong for the better carrying out of its objects. The proposed new section 6(3) in clause 4 of the Bill is an express provision to displace the presumption against extra-territorial application and enable the VTC to perform any of its functions in a place outside Hong Kong.

The new section 6(4) in clause 4 of the Bill allows the VTC to perform its functions for the training and education of persons who are not Hong Kong persons. However, no subsidy shall be made available by the Government towards the provision of such training and education.

Section 5 and 6 of Cap. 1130 should be construed together and that the functions should not be construed to be inconsistent with the objects. Section 5(b) to (e) of Cap.1130 are silent as to the territorial limit of the objects specified therein. Construing sections 5 and 6 (as amended by the Bill) together, the VTC may carry out its objects under section 5(b) to (e) in a place outside Hong Kong.

We hope the above has addressed your concern.

Yours sincerely,



(Gary Au)

for Secretary for Education and Manpower

c.c. Department of Justice (Attn: Ms Phyllis Poon)

A BILL

To

Amend the Vocational Training Council Ordinance to empower the Vocational Training Council to perform its functions outside Hong Kong; to empower the Deputy Chairmen of the Council to sign statements of accounts; and to make other minor amendments.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Vocational Training Council (Amendment) Ordinance 2004.

2. Interpretation

Section 2 of the Vocational Training Council Ordinance (Cap. 1130) is amended –

- (a) in the definition of “disabled person”, by repealing “disabled person” and substituting “person with a disability”;
- (b) in the definition of “skills training”, in paragraphs (a) and (b), by repealing “disabled persons” and substituting “persons with a disability”.

3. Objects of the Council

Section 5(d) is amended by repealing “disabled persons” and substituting “persons with a disability who are”.

4. Functions of the Council

Section 6 is amended by adding –

“(3) Subject to subsection (4), the Council may perform any of its functions under this section in Hong Kong or elsewhere either on its own or jointly with or as agent for other person or organization.

~~(4) The Council may not perform any of its functions outside Hong Kong using any money appropriated by the Legislative Council under section 12(a) unless the functions so performed are for the training and education of Hong Kong persons.~~

(4) If the Council performs any of its functions outside Hong Kong for the training or education of persons other than Hong Kong persons, no subsidy shall be made available by the Government towards the performance of such functions and no subsidy provided by the Government for the Council shall be used to subsidize such functions.

(5) For the purposes of subsection (4) and this subsection -
 “Hong Kong person” (香港人) means a person who -

- (a) holds an identity card issued under the Registration of Persons Ordinance (Cap. 177); and
- (b) (i) is not subject to any condition of stay imposed in respect of the person under the Immigration Ordinance (Cap. 115), other than a limit of stay; and
- (ii) is not in breach of any limit of stay;

“limit of stay” (逗留期限), in relation to a person, means a condition of stay limiting the period during which the person may remain in Hong Kong.”.

5. Accounts

Section 17 is amended –

- (a) in subsection (3), by repealing everything after “thereof” and substituting a full stop;
- (b) by adding –

“(4) The statement and balance sheet required by subsection (3) shall be signed by the

Chairman, or if the Chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of a Chairman, by any one of the Deputy Chairmen.”.

Explanatory Memorandum

This Bill amends the Vocational Training Council Ordinance (Cap. 1130)

to –

- (a) empower the Vocational Training Council to perform its functions outside Hong Kong;
- (b) empower any one of the Deputy Chairmen of the Council to sign statements of accounts when the Chairman is absent from Hong Kong or is unable to act as Chairman; and
- (c) amend “disabled person” to “person with a disability”.