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Government Secretariat, Government of the Hong Kong Special Administrative Region  
The People's Republic of China

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Legislative Council Building  
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[Fax: 2877 5029]

Dear Ms Cheng,

**Vocational Training Council (Amendment) Bill**

I refer to my letter to you of 3 November on the captioned subject. We would like to make some amendments to the text. The revised responses to your questions are attached.

Please accept our apologies for the inconvenience caused.

Yours sincerely,

(Gary Au)

for Secretary for Education and Manpower

c.c. Department of Justice (Attn: Ms Phyllis Poon)  
Executive Director, Vocational Training Council



## **Objects and powers of the Vocational Training Council**

The policy intention behind the amendment exercise is to empower the Vocational Training Council (VTC) to conduct extra-territorial activities for the better carrying out of its functions, this is consistent with its objects. Such activities will be to the benefit of Hong Kong.

Section 5 of the VTC Ordinance (VTCO) sets out the objects of the VTC while section 6 sets out its functions to enable the VTC to carry out these objects. Section 5 does not specify any territorial limit of the objects.

In the current amendment exercise, the VTC's objects are kept intact. What the exercise aims to achieve is to expressly enable the VTC to perform its functions outside Hong Kong. Such functions are consistent with the current objects. The policy proposal is to remove any uncertainty or presumption in respect of the territorial limit of the VTC's functions by expressly enabling the VTC to perform its functions outside Hong Kong. Section 6 of the VTCO which prescribes the functions of the VTC requires to be amended to remove the uncertainty or presumption. With the expressed power conferred by the proposed section 6(3) in clause 4 of the Bill, we do not need to rely on the incidental power provided by section 6(2) of the VTCO for VTC to perform its functions outside Hong Kong. The proposed CSA to section 6(4) provides that no Government subsidy shall be made available to subsidize non-Hong Kong people in extra-territorial functions as a safeguard on the use of public money. You may wish to refer to the example of Hong Kong Baptist University Ordinance (Cap. 1126). Section 3(2) of Cap. 1126 which sets out the University's object in general term. Section 12(e) of Cap. 1126 provides that one of the functions is to promote the interests of the University in Hong Kong and elsewhere. This example shows that an express provision for extra-territorial function is in order. Hence we do not consider any need to amend the objects clause (i.e. section 5, of the VTCO) in this respect.

## **Taking part in joint venture and corporate dealings and VTC's legal liabilities**

It is the intention of the VTC to carry out extra-territorial activities through a limited company or in partnership with third parties through this company. The liabilities incurred in carrying out such extra-territorial activities will be borne by the company as a separate legal entity.

In using a company as a vehicle to perform VTC's functions, the most important policy consideration is whether there is adequate control of its activities. There are already many provisions in the existing VTCO to allow the Government to monitor the companies under the VTC. The activities of the VTC's companies are under the control of the Council. Section 8 of the VTCO specifies the composition of the Council and provides for Government representation. Section 14 specifies that the Council shall submit to the Chief Executive for his approval a programme of its proposed activities and estimates of its income and expenditure for the next financial year. Section 22 specifies that the VTC is to be subject to the directions of the Chief Executive in Council. All these provide the Government the necessary means to oversee the activities of the VTC's companies through the Council and its Government members.

Regarding the arrangements for using companies as vehicles or for the VTC to form partnership with third parties, the following provisions in the VTCO are relevant –

Section 6 (2) of the current VTCO stipulates that –

*The Council may do all the things that are necessary for, or incidental or conducive to, the better carrying out of the objects of the Council...*

Section 6(2)(s) of the VTCO stipulates that the VTC may –

*acquire, hold and lease any property required for the discharge of its functions under this Ordinance and, subject to the terms and condition upon which such property is held, dispose of it;*

Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), “property” is defined to include, inter alia, choses in action. Choses in action includes shares in a company. As such, VTC may acquire or hold shares in a company under section 6(2)(s) where such acquisition or holding is required for the discharge of its functions under the VTCO.

The proposed section 6(3) in clause 4 of the Bill allows the VTC to –

*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 persons or organization.*

The carrying out of the functions in a place outside Hong Kong by the VTC itself, or through a company, is in order pursuant to section 6(2), 6(2)(s) and the proposed section 6(3) mentioned above.

### **“Government” and “subsidy provided by the Government”**

The meaning of “Government” in the proposed CSA to section 6(4) is the meaning as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), i.e. the Government of the Hong Kong Special Administrative Region.

The term “subsidy” is not defined and in accordance with the rules of statutory interpretation, its natural dictionary meaning will apply in its interpretation. The Oxford English Dictionary defines “subsidy” to mean a sum of money granted from public funds to help an industry or business to keep a price of a commodity or service low. We are of the view that the dictionary meaning of “subsidy” is clear and adequate and a definition is not necessary. Other ordinances, see for example sections 3 and 85 of the Education Ordinance (Cap. 279), section 2 of the Grants Schools Provident Fund Rules (Cap. 279C), section 4 of the Society of Boys’ Centres Incorporation (Cap. 1008), section 5 (f) of the Hong Kong Tuberculosis, Chest and Heart Diseases Association Incorporation Ordinance (Cap. 1024), also use “subsidy” without defining it.