

Accreditation of Academic and Vocational Qualifications Bill
Proposed Committee Stage Amendments

This paper sets out additional Committee Stage Amendments (CSAs) proposed by the Administration in the light of the discussions at the Bills Committee meeting held on 26 January 2007.

A. Proposed CSAs

Membership of review committees (proposed section 17B(3)(b) added by clause 35), Appeal Board (new clause 10(3)(a)(ii) in CSAs); and the Hong Kong Council for Academic and Vocational Accreditation (proposed section 3(2A)(b) added by clause 23)

2. The proposed section 17B(3)(b) of the Hong Kong Council for Academic Accreditation Ordinance (Cap. 1150) added by clause 35 of the Bill specifies that a review committee shall consist of members who have expertise or experience in quality assurance or the conduct of accreditation tests; or good standing in the field of commerce, finance, education or training or in any industry.

3. At the Bills Committee meeting, Members suggested not to specify “commerce” and “finance” in the provision as the expression “or in any industry” would have covered these two and indeed other industries. Nonetheless, Members agreed that the references to “education” and “training” could be retained as they are directly relevant to the matters to be considered by the review committee. Having considered Members’ comments, we propose to delete the references to “commerce” and “finance” in the proposed section 17B(3)(b) of Cap. 1150 added by clause 35 of the Bill.

4. For the sake of consistency, we propose to introduce similar amendments to the new clause 10(3)(a)(ii) of the Bill (in the draft CSAs), which adopts a similar formulation as regards the membership of the Appeal Board. Accordingly, we propose to delete the references to “law”, “commerce” and “finance” from that clause. Likewise, we also propose to delete the references to “commerce” and “finance” regarding

the membership of the Hong Kong Council for Academic and Vocational Accreditation (HKCAVA) in the proposed section 3(2A)(b) of Cap. 1150 added by clause 23 of the Bill.

Functions of review committees under new section 17C of Cap. 1150 (added by clause 35)

5. At the Bills Committee meeting, the Assistant Legal Adviser of LegCo enquired if a provision similar to new clause 12A(4) of the Bill (in the draft CSAs) should be added to the proposed Part IVA of Cap. 1150 (added by clause 35 of the Bill) to make it clear that counsel and solicitors are not entitled to be heard before a review committee.

6. Given that the function of a review committee is to assess the reasonableness of decisions made by the HKCAVA in relation to matters which fall outside the scope of Qualifications Framework, it would not be appropriate or necessary to have counsel or solicitors to be heard before a review committee. Hence, we agree to introduce a CSA to the proposed section 17C of Cap. 1150 (added by clause 35 of the Bill) to stipulate that a counsel or solicitor is not entitled to be heard before a review committee.

B. Other Issues and Considerations

7. Clause 10(7) of the new Part 3 (Appeal Board) of the Bill (in draft CSAs) states that the Chairman of the Appeal Board may make rules to provide for the lodging of appeals and generally for regulating the practice and procedure of the Appeal Board. At the Bills Committee meeting, a Member suggested adding an express provision to state that rules made under clause 10(7) are subsidiary legislation and subject to negative vetting.

8. In the “Report of the Panel on Administration of Justice and Legal Services concerning the factors relevant to determining whether an instrument is subsidiary legislation” submitted to the House Committee in March 2005 (paragraph 10 of LC Paper No. CB(2)990/04-05), it was stated that “..... since October 1999, in cases of doubt as to whether or not an instrument is subsidiary legislation, the Administration has adopted

the approach of including in new legislation an express provision declaring or clarifying the character of the instrument. When such a provision is proposed, it will come under the scrutiny of LegCo and is subject to amendment and debate by LegCo.”

9. In the present case, the Department of Justice has advised that the rules to be made by the Chairman of the Appeal Board under clause 10(7) of the Bill amount to subsidiary legislation if they are general rules to be applied to all appeals and to lay down the general rules of conduct. As this is indeed our policy intention, it is clear and without doubt that the rules to be made under clause 10(7) of the Bill will be subsidiary legislation. In the circumstances, the situation described in paragraph 8 above does not apply and hence it would be unnecessary to include an express provision to state that the rules made under clause 10(7) are subsidiary legislation.

C. Next Step

10. Members are invited to comment on the revised draft of the CSAs proposed by the Administration (at **Annex**) which has incorporated the latest CSAs proposed in this paper (and marked up for Members’ reference).

Education and Manpower Bureau
January 2007

ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education
and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
enacting formula	In the Chinese text, by deleting “訂” and substituting “定”.
2	(a) By deleting the definitions of “business” and “review committee”. (b) In the Chinese text, in the definition of “營辦者”, by deleting “團體;” and substituting “團體。”.
3	(a) In subclause (1), by deleting everything after “qualifications” and substituting a full stop. (b) By adding - “(1A) The Qualifications Framework shall be made available to the public for inspection free of charge at

such place and in such form and at such reasonable times as the Secretary may specify.”.

4 (4) (a) By adding “subject to the prior approval of the Secretary,” before “determine”.

5 (a) In subclause (3), in the Chinese text, by deleting “估評” and substituting “評估”.

(b) In subclause (4), by adding “and shall state in the notice the reason for the decision” after “body”.

7 (a) By adding -

“(3A) The QR Authority may -

(a) correct any error in the Qualifications Register, including any omission from the Qualifications Register; and

(b) make such amendments to the Qualifications Register as it

considers necessary
to record a change in
the information
contained in the
Qualifications
Register.”.

(b) By adding -

“(4A) The purpose of making the
Qualifications Register available to the
public is to enable any member of the
public -

(a) to ascertain what
qualifications are
recognized under the
Qualifications
Framework; and

(b) to ascertain the
particulars of such
qualifications.”.

(c) In subclause (5), by deleting “(1) (e)” and
substituting “(1) (e) (ii)”.

(d) In subclause (6), by adding “and shall
state in the notice the reason for the
decision” after “body”.

8

(a) In subclause (3), by deleting everything after "agencies" and substituting a full stop.

(b) By adding -

"(3A) The list of the names of appointed assessment agencies shall be made available to the public for inspection free of charge at such place and in such form and at such reasonable times as the Secretary may specify."

Part 3

By deleting the Part and substituting -

"PART 3

APPEAL BOARD

**9. Interpretation of
Part 3**

In this Part -

"appeal" (上訴) means an appeal under
section 11;

"Appeal Board" (上訴委員會) means the appeal
board established under section
10(1);

"appellant" (上訴人) means an operator,

assessment agency or granting body

lodging a notice of appeal under

section 11;

“Chairman” (主席) means the chairman of the

Appeal Board appointed under section

10(2)(a);

“Deputy Chairman” (副主席) means a deputy

chairman of the Appeal Board appointed

under section 10(2)(b);

“panel member” (備選委員) means a member of

the panel of persons appointed under

section 10(2)(c);

“presiding officer” (審裁官), in relation

to an appeal, means the presiding

officer referred to in section

12(1)(a).

10. Establishment of Appeal Board, etc.

(1) For the purposes of considering

and deciding appeals, there is established an appeal board.

(2) The Secretary shall appoint -

- (a) a person to be the chairman of the Appeal Board;
- (b) one or more persons to be the deputy chairman or deputy chairmen of the Appeal Board; and
- (c) a panel of persons whom the Secretary considers suitable for selection under section 12(1)(b) as members of the Appeal Board.

(3) A person may be appointed under subsection (2) only if -

- (a) he is a person whom the

Secretary considers
suitable for appointment
by reason of his -

(i) expertise or
experience in
quality assurance
or the conduct of
accreditation
tests; or

(ii) good standing in
the field of ~~law,~~
~~commerce, finance,~~
education or
training or in any
industry; and

(b) he is not a member of the
Accreditation Authority
or of the QR Authority.

(4) A person appointed under

subsection (2) may at any time resign by notice in writing to the Secretary.

(5) An appointment under subsection (2) shall be notified in the Gazette.

(6) The remuneration, if any, of the Chairman, a Deputy Chairman and a panel member shall be paid at a rate that the Secretary determines.

(7) The Chairman may make rules -

- (a) to provide for the lodging of appeals; and
- (b) generally for regulating the practice and procedure of the Appeal Board.

11. Appeal to Appeal Board

(1) An operator, assessment agency or granting body aggrieved by -

- (a) a determination of the

Accreditation Authority,

as stated in an

accreditation report;

(b) a decision of the

Accreditation Authority

on the length of the

validity period of a

determination of the

Authority, as stated in

an accreditation report;

(c) a decision of the

Accreditation Authority

as to the conditions or

restrictions subject to

which a determination of

the Authority is to have

effect, as stated in an

accreditation report;

(d) a decision of the

Accreditation Authority

referred to in section

5(4);

(e) a decision of the QR
Authority referred to in
section 7(6); or

(f) a decision made by the
Accreditation Authority
or the QR Authority under
section 12C(b),

made in respect of him or it may appeal to
the Appeal Board.

(2) An operator, assessment agency or
granting body wishing to appeal under
subsection (1) shall lodge a notice of
appeal with the Appeal Board in such form
as the Chairman may specify -

(a) within 30 days of the
receipt by the operator,

assessment agency or
granting body of a copy of
the accreditation report
under section 5(3) or the
notice of the decision
under section 5(4), 7(6)
or 12C(c), as the case may
be; or

(b) within such further
period as the Chairman
may allow.

12. Members of Appeal Board

(1) For the purposes of an appeal, the
Appeal Board shall consist of -

(a) the Chairman or a Deputy
Chairman, as determined
by the Chairman, who
shall preside at meetings

and hearings held for the appeal ("presiding officer"); and

(b) not less than 2 and not more than 6 panel members selected by the presiding officer.

(2) If the Chairman, due to absence from Hong Kong or for any other reason, is unable to act as Chairman for any period, a Deputy Chairman designated by the Chairman for the purposes of this subsection shall act in the place of the Chairman for that period.

(3) If the presiding officer who is a Deputy Chairman or a panel member selected under subsection (1) (b), due to absence from Hong Kong or for any other reason, is unable to act as presiding officer or a

member of the Appeal Board for the purposes of the relevant appeal for any period, the Chairman may, as the case may be -

- (a) act in the place of the presiding officer for that period or select another Deputy Chairman to act in the place of the presiding officer for that period; or
- (b) select another panel member to act in the place of such member of the Appeal Board for that period.

(4) If the term of appointment of the presiding officer or of a panel member selected under subsection (1) (b) expires before the Appeal Board makes a decision

under section 12B(2) (a) for the relevant appeal, the presiding officer or panel member may continue to act as presiding officer or a member of the Appeal Board for the purposes of that appeal until such a decision is made.

12A. Procedure

(1) The Appeal Board may, with the consent of the parties to an appeal, consider and decide the appeal on the basis of written submissions only without holding a hearing to receive oral representations.

(2) In considering an appeal, every question before the Appeal Board shall be determined by the opinion of the majority of the members of the Appeal Board voting on the question, and in the case of an equality of votes the presiding officer

shall have a second or casting vote.

(3) Subject to subsection (4), a party to an appeal is entitled to be heard in person or through its authorized representative.

(4) A counsel or solicitor is not entitled to be heard before the Appeal Board unless -

(a) he is acting on his own behalf as a party to an appeal; or

(b) he is an officer or employee of a party to an appeal and is acting as the authorized representative of the party.

(5) Any hearing held in connection with an appeal to receive oral

representations shall take place in public, but if the Appeal Board after consulting the parties to the appeal is satisfied that it is desirable to do so, it may direct that the whole or part of the hearing shall take place in private and give directions as to the persons who may be present.

12B. Functions of Appeal Board

(1) For the purposes of an appeal, the Appeal Board may -

- (a) determine any matter of practice or procedure relating to the appeal where no provision governing such matter is made in this Ordinance or in any rules made under

section 10(7);

(b) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law; and

(c) by notice in writing, request any person -

(i) to produce to the Appeal Board any document or article that is relevant to the appeal and is in his custody or under his control;

or

- (ii) to appear before
the Appeal Board
and to give
evidence relevant
to the appeal.

(2) After considering an appeal, the
Appeal Board shall -

- (a) make a decision to -
 - (i) confirm, vary or
reverse the
determination or
decision under
appeal or
substitute any
other
determination or
decision for the
determination or

decision under

appeal; or

(ii) subject to

subsection (3),

direct the

Accreditation

Authority or the QR

Authority, as the

case may be, to

review the

determination or

decision under

appeal within such

period as the

Appeal Board may

specify; and

(b) notify the Accreditation

Authority or the QR

Authority, as the case

may be, and the appellant
in writing of its
decision and the reasons
for the decision.

(3) Subsection (2) (a) (ii) does not
apply in relation to an appeal against a
decision made under section 12C(b).

**12C. Review of
determination or
decision under
appeal**

After receiving a notice from the
Appeal Board of a decision under section
12B(2) (a) (ii), the Accreditation
Authority or the QR Authority, as the case
may be, shall, within such period as the
Appeal Board may specify -

- (a) review the determination
or decision under appeal;
- (b) make a decision to

confirm, vary or reverse
the determination or
decision under appeal or
substitute any other
determination or
decision for the
determination or
decision under appeal;
and

(c) notify the Appeal Board
and the appellant in
writing of its decision
and the reasons for the
decision.

**12D. Protection of
Chairman, Deputy
Chairman or panel
member**

The Chairman, a Deputy Chairman or a
panel member, acting in good faith, shall

not be personally liable for any act done or default made by him, in the exercise or purported exercise of the powers conferred by this Part or in the performance or purported performance of the functions or duties imposed under this Part.”.

13

(a) In subclause (1), in the Chinese text, by deleting everything from “任何” to “此限” and substituting “任何廣告如聲稱、表述或顯示從某頒授 可取得的資歷或在完成某進修計劃後可取得的資歷是在資歷架構下獲認可的，除非該廣告符合以下規定，否則任何人不得發表或安排發表該廣告”.

(b) By deleting subclause (4) (a) (iii) and substituting -

“(iii) he had no reason to believe that he would be committing an offence by publishing or causing to be published the advertisement; or”.

14

By deleting the clause and substituting -

“14. Misleading or false statement,

**representation or
information**

(1) A person who, either orally or in writing, makes any statement or representation or furnishes any information to a specified authority in connection with the performance of its functions under this Ordinance which the person knows or reasonably ought to know is misleading or false in a material respect commits an offence and is liable on conviction to a fine at level 5.

(2) In subsection (1), "specified authority" (指明當局) means -

- (a) the Accreditation Authority;
- (b) the QR Authority;
- (c) a person or an organization with whom the Accreditation Authority jointly performs a function in accordance with section 4(2);
- (d) a person or group of persons to whom the

performance of a function
is delegated under section
4(3);

- (e) a person or an organization
with whom the QR Authority
jointly performs a
function in accordance
with section 6(2); or
- (f) the Appeal Board within the
meaning of Part 3."

18

- (a) In the heading, by deleting ", **QR Authority
or review committee**" and substituting "**or
QR Authority**".
- (b) In subclause (1) -
 - (i) by deleting ", a member of any review
committee";
 - (ii) in paragraph (a), by adding "or"
after the semicolon;
 - (iii) by deleting paragraph (b);
 - (iv) in paragraph (c), in the Chinese
text, by deleting "、委員".
- (c) In subclause (2), in the Chinese text, by
deleting "、委員".

- 19 By deleting "establishment of the Hong Kong Council for Academic and Vocational Accreditation" and substituting "establishment of the Hong Kong Council for Accreditation of Academic and Vocational Qualifications".
- 20 By deleting everything after "amended" and substituting "by repealing "Hong Kong Council for Academic Accreditation" and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".".
- 21 (a) In subclause (3), by deleting everything after ""Council", " and substituting "by repealing "Hong Kong Council for Academic Accreditation" and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".".
- (b) In subclause (6), by deleting the proposed definition of "business".
- 22 By deleting everything after "amended" and substituting "by repealing "HONG KONG COUNCIL FOR ACADEMIC ACCREDITATION" and substituting "HONG KONG COUNCIL FOR ACCREDITATION OF ACADEMIC AND VOCATIONAL QUALIFICATIONS".".

23~~(1)~~

(a) In subclause (1), in the proposed section 3(1), by deleting "Hong Kong Council for Academic and Vocational Accreditation" and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".

(b) In subclause (4), in the proposed section 3(2A) (b), by deleting "commerce, finance,".

25

(a) In subclause (8), in the proposed section 5(2) (e), by adding "subject to the prior approval of the Secretary," before "determine".

(b) In subclause (14), in the proposed section 5(4), by deleting "(2) (ea)" and substituting "(2) (e) and (ea)".

26

(a) In the proposed section 5A(3), in the Chinese text, by deleting "估評" and substituting "評估".

(b) In the proposed section 5A(4), by adding "and shall state in the notice the reason for the decision" after "individual".

(a) In the proposed section 17B(3)(b), by deleting "commerce, finance,".

(b) By deleting the proposed section 17C(1)(a) and substituting -

"(a) may determine any matter of practice or procedure relating to the relevant review where no provision governing such matter is made in this Ordinance or in any rules made under section 22(2)(aa);".

~~(b)~~ (c) In the proposed section 17C(1)(c)(i), by deleting "and" at the end and substituting "or".

(d) In the proposed section 17C, by adding -

"(1A) A counsel or solicitor is not entitled to be heard before a review committee unless -

(a) he is acting on his own behalf as a party to a review; or

(b) he is an officer or employee of a party to a

review and is acting as
the authorized
representative of the
party.”.

38(1) By deleting everything after “amended” and substituting “by repealing “Hong Kong Council for Academic Accreditation” where it twice appears and substituting “Hong Kong Council for Accreditation of Academic and Vocational Qualifications”.”.

39 By deleting the proposed section 23A and substituting -

**“23A. Misleading or false
statement,
/representation or
information**

(1) A person who, either orally or in writing, makes any statement or representation or furnishes any information to a specified authority in connection with the performance of its functions under this Ordinance which the person knows or reasonably ought to know

is misleading or false in a material respect commits an offence and is liable on conviction to a fine at level 5.

(2) In subsection (1), "specified authority" (指明當局) means -

- (a) the Council;
- (b) a person or an organization with whom the Council jointly performs a function in accordance with section 5(1)(b);
- (c) a committee to which the performance of a function is delegated under section 8(1);
- (d) a person or group of persons to whom the performance of a function is delegated under section 8(2); or
- (e) a review committee."

44

In the proposed item 38 of Schedule 13, by deleting "Hong Kong Council for Academic and Vocational Accreditation" where it twice

appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".

45 By deleting everything after "item 57" and substituting "by repealing "Hong Kong Council for Academic Accreditation" and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".".

47 By deleting everything after "definition of "Accreditation Council", " and substituting "by repealing "Hong Kong Council for Academic Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".".

- 48
- (a) In the English text, by deleting "Academic".
 - (b) By deleting "and Vocational Accreditation" and substituting "Accreditation of Academic and Vocational Qualifications".
 - (c) By deleting "5(2)(ea)" and substituting "5(2)(e), (ea)".

- Schedule 1
- (a) In Part 1, by deleting "Hong Kong Council for Academic and Vocational Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".
 - (b) In Part 2, by deleting "Hong Kong Council for Academic and Vocational Accreditation" where it twice appears and substituting "Hong Kong Council for Accreditation of Academic and Vocational Qualifications".

- Schedule 3
- (a) In paragraph 3(b), by adding "of the Ordinance" after "section 5(1)".
 - (b) In paragraph 4, by adding "of the Ordinance" after "section 8(1)(c)".