

Accreditation of Academic and Vocational Qualifications Bill

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 1 February 2007.

A. Proposed CSAs

Appeal rules to be made under new clause 10(7) in CSAs

2. The new clause 10(7) of the Bill (in the last draft of the 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 last meeting, Members commented that the rule-making power of the Appeal Board should not be vested in the Chairman alone and suggested that the process should be broadened to include members of the Appeal Board. The Administration explained that as there would be a sizable number of panel members with different background, it would be difficult to involve all of them in the rule-making process.

3. In an attempt to broaden participation while recognizing the practical difficulties of involving all panel members in the rule-making process, we propose adding a new clause 11 to establish a rules committee to make the appeal rules. The rules committee shall consist of the Chairman, all Deputy Chairmen, and 6-8 panel members selected by the Secretary for Education and Manpower. Furthermore, we propose to add a provision to make it clear that no appeal rules made by the rules committee shall come into operation before the expiry of the negative vetting period (new clause 11(7)).

B. Next Step

4. Members are invited to comment on the revised draft of the CSAs proposed by the Administration (at **Annex**), which have incorporated the latest CSAs proposed in this paper (with consequential/related amendments) (marked up for Members' reference).

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

1112;

"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

1112;

"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 12A(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 12A(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) 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.

(67) 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 rules

(1) There is established a rules
committee.

(2) The rules committee shall consist
of -

(a) the Chairman;

(b) all Deputy Chairmen; and

(c) not less than 6 and not more
than 8 panel members selected
by the Secretary.

(3) The Chairman shall preside at

meetings of the rules committee.

(4) The quorum for a meeting of the rules committee shall be two-thirds of its members (including the Chairman).

(5) The rules committee may make rules -

(a) to provide for the lodging of appeals; and

(b) generally for regulating the practice and procedure of the Appeal Board.

(6) The power to make rules under subsection (5) may be exercised in the name of the rules committee at any of its meetings by a majority of its members present, and in the case of an equality of votes the Chairman shall have a second or casting vote.

(7) No rule made under subsection (5) shall come into operation before the expiry of the period within which a resolution providing for the amendment of the rule may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

1112.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 12€D(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 12€D(c), as the case may be; or
- (b) within such further period as the Chairman may allow.

12A. 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.

(34) 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 12BC(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.

12AB. 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.

12BC. 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)~~11(5);
- (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 12GD(b).

12GD. Review of determination or decision under appeal

After receiving a notice from the Appeal Board of a decision under section 12BC(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.

**12DE. 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者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

- (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".

35

(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);".

(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)".