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Secretary for Education and Manpower
(Attn : Ms Rebecca Pun, PAS(MI))
Education and Manpower Bureau
11th floor, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

15 September 2005

BY FAX

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Total no(s) of page(s) : 8

Dear Ms Pun,

Accreditation of Academic and Vocational Qualifications Bill

We are scrutinising the legal and drafting aspects of the Bill and should be grateful if you would clarify the following questions.

Clause 2

- (a) In the definition of “business”, would you clarify whether the definition covers the business of an organisation part of which is with a view to profit and part of which is for charity?
- (b) In the definition of “assessment agency”, would you consider setting out statutory guidelines for the assessment agency to follow when assessing skills, etc. and granting qualifications?

Clause 4(2)

Would you give examples of functions performed jointly with “other persons and or organizations”?

Clause 4(4)(a)

Would you explain the reason for not including the determination of fees to be charged for the conduct of accreditation tests in a schedule of fees which require approval of the Secretary (see clause 16(2)(b))?

Clause 5(2)

In the circumstances of clause 5(2)(b)-(e), does the Accreditation Authority's decision to vary or withdraw an accreditation report have retrospective or prospective effect only without affecting the validity of any assessment, etc. made prior to such variation or withdrawal? Would it be desirable to provide expressly the legislative intent whether it is retrospective or prospective?

Clause 6(2)

Would you give examples of the function performed jointly with "other persons and or organizations"?

Clause 7(5)

Would you explain the reason for not making the QR Authority liable to refund any fee, etc. where the removal of an entry of a qualification from the Qualifications Register under subsection (1)(e) is due to its own mistake?

Clause 8(1)(c)

Would you give examples as to what "conditions or restrictions" the Secretary for Education and Manpower may impose in appointing or re-appointing an assessment agency?

Clause 8(2)

Would you explain the reason for including criteria (clause 8(2)(a)-(d)) for the Secretary to have regard to when deciding whether to appoint or re-appoint an assessment agency but not in clauses 5 (2)(c) and 8(4)(a)?

Clause 8(4)(c)

Would you give examples of cancellation the appointment or re-appointment of an assessment agency for “other` reasonable cause”?

Clause 9(1)

Presumably, a determination or decision referred to in clause 9(1)(a)-(e) would not be suspended pending the report to be made by a review committee or the final decision of the Accreditation Authority or QR Authority. Would you consider it necessary to provide for situations where it would be appropriate for the review committee to suspend the operation of a determination or decision referred to in clause 9(1)(a)-(e) pending report on the application or final decision of the Accreditation Authority or QR Authority?

Clause 10(3)(a)

What is the meaning of “quality assurance”? Does it require a statutory definition?

Clause 11(1)(c)(i)

- (a) Would the power to request a person to produce documents override his common law duty of confidentiality or other statutory duty to keep the documents secret?
- (b) What would be the penalty for a person who fails to comply with such request to produce documents?

Clause 11(1)(c)(ii)

- (a) Would the power to request a person to appear before a review committee and to give evidence override his statutory duty, if any, to seek the consent of his employer to do so?
- (b) Must his employer consent to his employee who is subject of the request to give evidence?

- (c) What would be the penalty for a person who fails to comply with such request to appear or give evidence?

Clause 16(1)

Would you explain, in determining the fee under the Ordinance (upon enactment of the Bill), the factors to be taken into consideration apart from the amount of administrative or other costs incurred or likely to be incurred in relation to the matter to which such fee relates?

Clause 21(4)

It amends section 2(1) of the Hong Kong Council for Academic and Vocational Accreditation Ordinance (as amended). Please explain the reason for repealing the definition of “Executive Committee” and other references to “Executive Committee” in the Hong Kong Council for Academic and Vocational Accreditation Ordinance.

Clause 21(6)

It amends section 2(1) of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by adding a new definition of “accreditation test”. In comparing the definition of “accreditation test” in clause 2 of the Bill, would you explain the reason for including a new paragraph (e) in the definition of “accreditation test” in section 2(1) of the Hong Kong Council for Academic and Vocational Accreditation Ordinance?

Clause 23(4)

It amends section 3 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by adding a new subsection (2A). In new (2A)(a), what is the meaning of the term “quality assurance”? Does it require a statutory definition?

Clause 23(5)

It amends section 3 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by repealing section 3(3) and replacing it with a new

section 3(3). Is it necessary to define the meaning of “residents of Hong Kong”?

Clause 25(2)

It amends section 5 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by adding new section 5(1). In new section 5(1)(b), would you give examples of “other persons or organizations”?

Clause 25(5)-(9)

It amends section 5 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance. Would you explain the policy of, on the one hand, allowing the Hong Kong Council for Academic and Vocational Accreditation (as amended) (“the Council”) to determine fees on its own in new section 5(2)(ba), the amended section 5(2)(c), new section 5(2)(d), the amended section 5(2)(e); and on the other hand, requiring the Council to determine fees subject to the prior approval of the Secretary for Education and Manpower in new section 5(2)(ea)?

Clause 25(11)

It amends section 5 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by adding new subsection (2)(gb). It is noted that in clause 10(5)(b), there is provision for payment of travelling expenses, etc. to members of a review committee established under the clause. Would it be necessary to make similar provision for a review committee established under new section 17B of the Hong Kong Council for Academic and Vocational Accreditation Ordinance?

Clause 25(14)

It amends section 5 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance by adding a new subsection (3). Would you explain, in determining the fee under section 5(2) of the Hong Kong Council for Academic and Vocational Accreditation Ordinance, the factors to be taken into consideration apart from the amount of administrative or other costs incurred or likely to be incurred in relation to the matter to which such fee relates?

Clause 26

- (a) In new section 5A(1), would you clarify whether or not both “the validity period of the determination and the conditions or restrictions” qualify the term “an individual”?
- (b) In the circumstances of new section 5A(2)(b)-(e), does the Council’s decision to vary or withdraw an accreditation report have retrospective or prospective effect only without affecting the validity of any assessment, etc. made prior to such variation or withdrawal? Would it be desirable to provide expressly the legislative intent whether it is retrospective or prospective?

Clause 28

It amends section 7 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance. Would you explain the reason for not requiring the appointment of employees, etc. by the Council on terms of remuneration approved by the Secretary for Education and Manpower?

Clause 31

It repeals section 10 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance. Would you explain the reason for not requiring the Secretary for Education and Manpower to consult with Secretary for Financial Services and the Treasury before approving certain fees or charges?

Clause 35

- (a) Presumably, a determination or decision referred to in new section 17A(1)(a)-(d) of the Hong Kong Council for Academic and Vocational Accreditation Ordinance would not be suspended pending the report to be made by a review committee or the final decision of the Council. Would you consider it necessary to provide for situations where it would be appropriate for the review committee to suspend the operation of a determination or decision referred to in clause 9(1)(a)-(d) pending report on the application or final decision of the Council?

- (b) In the Chinese version of new section 17A(1)(d), should “指” be replaced by “提述” (see clause 9(1)(d))?
- (c) In new section 17B(3)(a), what is the meaning of “quality assurance”? Does it require a statutory definition?
- (d)(i) In new section 17C(1)(c)(i), would the power to request a person to produce documents override his common law duty of confidentiality or other statutory duty to keep the documents secret?
 - (ii) What would be the penalty for a person who fails to comply with such request to produce documents?
- (e)(i) In new section 17C(1)(c)(ii), would the power to request a person to appear before a review committee and to give evidence override his statutory duty, if any, to seek the consent of his employer to do so?
 - (ii) Must his employer consent to his employee who is subject of the request to give evidence?
 - (iii) What would be the penalty for a person who fails to comply with such request to appear or give evidence?
- (f) In the Chinese version of new section 17C(3)(b), should “指” be replaced by “提述” (see clause 11(3)(b))?

Clause 39

Is it necessary to add “a committee” to new section 23A?

Clause 41

- (a) In new section 27(4)(b), what would happen to the vacant office of a member of the Executive Committee?
- (b) In new section 27(5), what would happen to the vacant office of an appointed member?

- (c) In the amended section 3 of the Hong Kong Council for Academic and Vocational Accreditation Ordinance, it provides for a new composition of membership of the Council. Would that take place after the term of office of all the existing members, as saved by new section 27(5), has expired?

We should be grateful for your reply, in both languages, by **3 October 2005**.

Yours sincerely,

(Stephen Lam)
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