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**Report of the Bills Committee on
Accreditation of Academic and Vocational Qualifications Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Accreditation of Academic and Vocational Qualifications Bill.

The Bill

2. The Bill seeks to provide for accreditation of academic and vocational qualifications under the Qualifications Frameworks (QF) administered by the Hong Kong Council for Academic and Vocational Accreditation (Council), and for related and consequential matters. The Bill -

- (a) establishes a QF which contains a hierarchy of qualifications;
- (b) establishes the Accreditation Authority responsible for developing and implementing the standards and mechanism for academic or vocational qualifications accreditation to underpin QF, and conducting accreditation tests;
- (c) establishes a Qualifications Register (QR) for entering qualifications recognised under QF to be maintained by the QR Authority;
- (d) empowers the assessment agencies to grant qualifications, in relation to an industry, for the purposes of QF;
- (e) establishes review committees to review decisions of the Accreditation Authority or the QR Authority in relation to the outcome of an accreditation test, etc.;
- (f) regulates advertisements relating to QF and QR;

- (g) provides for determination and approval of fees; and
- (h) makes consequential amendments to the Hong Kong Council for Academic Accreditation (HKCAA) Ordinance (Cap. 1150) and other related amendments.

The Bills Committee

3. At the House Committee meeting on 8 July 2005, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

4. Under the chairmanship of Hon TAM Yiu-chung, the Bills Committee has held 21 meetings, including 20 meetings with the Administration. The Bills Committee has met with 16 organisations and six individuals. The Bills Committee has also received written submissions from 18 other organisations and three individuals. The names of these organisations and individuals are listed in **Appendix II**.

Deliberations of the Bills Committee

Need for the Qualifications Framework

5. On the need for QF, the Administration has explained that to help maintain the overall competitiveness of Hong Kong's manpower in the global economy, the Executive Council approved in 2004 the establishment of a seven-level cross-sectoral QF. QF is a hierarchy which orders and supports qualifications in the academic, vocational and continuing education sectors. Each level is characterised by its generic level descriptors which describe the common features of qualifications at the same level. To ensure the credibility of qualifications awarded by a wide range of education and training operators under QF, it is necessary to develop a mechanism of academic and vocational accreditation to assure the quality of these qualifications.

6. The Administration has informed the Bills Committee that so far 12 industry-led Industry Training Advisory Committees (ITACs) have been set up. The functions of an ITAC include setting industry-recognised competency standards, which form the basis for developing training programmes relevant to industry needs and implementing the recognition of prior learning (RPL) mechanism.

7. Some members consider that a consensus should be reached within an industry before implementing QF in that industry. They have suggested that provisions should be made in the Bill to require the Secretary for Education and Manpower (SEM) to consult an industry and reach a consensus before QF is implemented in that industry.

8. The Administration has explained that it is the Government's established policy that QF will not be implemented in a particular industry unless a consensus is reached within that industry. The Administration has been conducting extensive consultation with different parties on the implementation of QF. The establishment of the key components of the framework, such as ITACs and the development of specification of competency standards, for the 12 industries which have joined QF so far has been conducted administratively and based on consensus among the stakeholders in the industries, including the employers' and employees' representatives. As participation in QF by individual industries is voluntary, the Administration considers that industry consultation on QF should continue to be conducted administratively. It is therefore unnecessary and inappropriate to stipulate industry consultation and consensus in the Bill as pre-conditions for implementing QF.

9. To address members' concerns about the establishment of QF, the Administration has undertaken to report to the Panel on Manpower the progress of the implementation of QF in individual industries on a half-yearly basis. At the request of members, SEM will state this point in his speech to be made during the resumption of Second Reading debate on the Bill. SEM will also reaffirm in his speech that QF will not be implemented in a particular industry unless a consensus is reached within that industry.

Impact of the implementation of the Qualifications Framework on existing employees

10. Some members have expressed concern that although QF is not a mandatory system, some employers may require employees to obtain QF-recognised qualifications, which will indirectly become "licences for employment". They are particularly concerned about possible adverse impact of the implementation of QF on the employment of low-education and low-skilled employees. They are of the view that an exemption system should be put in place for existing employees in order not to affect their employment.

11. The Administration has responded that the implementation of QF in a certain industry depends on the participation, commitment and support of the industry. The Administration has no intention or wish to turn QF-recognised qualifications into "work licences". Since Hong Kong is a free and open economy, it is undesirable and infeasible to implement "licensing for employment" in every industry.

12. The Administration has advised that there are certain industries which stipulate the entry and practice requirements due to occupational or individual safety considerations. However, such requirements have nothing to do with the establishment of QF. The entry requirements for a certain industry should be determined at the sole discretion of that particular industry in response to the changing needs of the industry and the society. The establishment of QF will facilitate the industries to reach

consensus on the competency standards, and such standards are not specified by the Administration.

Complementary measures for the implementation of the Qualifications Framework

13. Some members are of the view that in order to implement QF successfully, the Government should formulate a full set of complementary measures, such as legislation against age discrimination in employment, restriction on working hours, legislation for a minimum wage, provision for paid training leave, in order that workers would have the time and financial resources to receive training and workers who have obtained recognition of qualifications would not be rejected for employment because of their age. Members note that Australia, in which QF has been implemented, has in place legislation against age discrimination, statutory control over maximum ordinary hours of employment, legislation setting out minimum conditions on various types of leave and minimum pay levels, and arrangements for paid training leave. In the United Kingdom where QF has been implemented, there are in place regulations stipulating limits on the length of the working day and working week as well as on the minimum amount of paid leave, and legislation setting out the national minimum wage level.

14. The Administration has responded that in order to foster a workforce which values training, both the employers and employees should share the same vision and that employees are encouraged to pursue learning. This would help upgrade the industries and the workforce. The Administration hopes that by implementing QF in different industries, the views of employers and employees on manpower development could be drawn closer, thus facilitating the discussions on labour policy issues, such as working hours and paid training leave. The Administration has pointed out that the issues of minimum wage and standard working hours were being examined by the Labour Advisory Board.

15. Regarding age discrimination in employment, the Administration considers it more appropriate to tackle the issue by public education and publicity as there is no consensus on the necessity and effectiveness of legislation. The Administration will continue to promote equal employment opportunities through education and publicity.

Mechanism for recognition of prior learning

16. Members have expressed concern about the RPL mechanism, in particular how those employees with low educational attainment could acquire qualifications under QF. They have also pointed out the difficulties of some employees in providing proof for working experience. Some members have suggested that labour unions should be allowed to issue evidence of years of working experience to employees for the purpose of applying for qualifications under the RPL mechanism.

17. The Administration has explained that the RPL mechanism seeks to recognise the skills, knowledge and experience of in-service and experienced workers. The prime

objective of RPL is to facilitate employees' continued learning and skills upgrading so that they need not start from the basics when attending training and that repeated training on similar subjects/skills can be minimised. The RPL mechanism will be based on the specification of competency standards (SCSs) formulated by the respective ITACs in order to ensure its credibility.

18. Regarding the recognition of qualifications, the Administration has explained that the number of years of service and relevant experience will form the basic requirements for recognition. According to the recommendations of various ITACs, the minimum years of service required for recognition of QF qualifications at Levels 1 to 4 will be one year, three years, five years and six years respectively. Job duties for posts previously held by the applicant should correlate with the cluster of units of competency for which recognition is sought. As proposed by the Administration and agreed by some of the ITACs, greater flexibility and allowance would be given to the attainment of qualifications at the junior levels (i.e. QF Levels 1 and 2) by taking into account workers' years of service and relevant experience. A worker applying for Level 1 or Level 2 qualifications under the RPL mechanism can present valid evidence of years of service, such as attestation of job and post issued by employers, business registration certificates, or other supporting information (including certificates and diplomas issued by training providers, attestation of members' job and post by labour unions, relevant licence and qualification obtained, etc.) as basis for proving his possession of the relevant competency standards in relation to his experience. ITACs of respective industries will propose the requirements for years of service and relevant experience and specific requirements for proof of such.

19. The Administration has further explained that in giving recognition to higher levels of qualifications (i.e. QF Level 3 or above), a higher standard of proof is required. Apart from considering the years of working experience of the applicant with respect to relevant competence, certain assessment of the applicant has to be conducted. This may take the form of interviews, skill demonstrations, practical assessments, etc. Same as the arrangement for applications for Level 1 or Level 2 qualifications, supporting information proving the applicant's years of working experience may include certificates and diplomas issued by training providers, attestations of members' job and post by labour unions, relevant licences and qualifications obtained in the Mainland or overseas, etc.

20. To address the concerns of the industries on the assessment to be conducted on applicants, the Administration has proposed to introduce transitional arrangements for workers applying for recognition of QF qualifications at Levels 1 to 3. During the five-year transitional period, workers may apply for recognition of QF qualifications at Levels 1 to 3 based on their years of working experience and relevant experience, without the need for taking any assessment. After the end of the transitional period, all levels of qualifications must be attained through assessment. The form of assessment will be in line with the skills and knowledge required of individual levels.

21. The Administration has also informed the Bills Committee that subject to the enactment of the Bill, it intends to introduce a two-year pilot scheme for the three industries that have already formulated their SCSs and reached a preliminary consensus on the mode of operation of the RPL mechanism, i.e. the Printing and Publishing, Watch and Clock, and Hairdressing industries. The Administration has further undertaken to conduct a review of the pilot scheme one year after its implementation, and to report to the Panel on Manpower the results of the review.

22. Some members have expressed concern about the cross-sectoral generic (foundation) competencies, which are being developed by the Education Manpower Bureau, as they are too complicated. Generic (foundation) competencies refer to knowledge and skills shared across many or all industries, such as languages, numeracy and information technology. They consider that the four strands of generic skills, namely, English, Chinese, numeracy and information technology are too academic. They are of the view that QF should focus on the vocational skills specific to an industry instead of the rather academic-oriented generic (foundation) competencies, and have queried the need for such competencies.

23. The Administration has explained that the generic (foundation) competencies and the specific SCSs complement each other, making it easier for training providers to develop courses relevant to the industries. The Administration has informed members that in September 2005, the Education and Manpower Bureau has engaged the Vocational Training Council (VTC) to develop the competency standards for the four strands of generic skills. With reference to local and overseas training courses and proficiency standards, VTC has developed generic (foundation) competency standards for QF Levels 1 to 4. The units of competency specified are portable, focus on the general skills necessary for performing various duties, and can be shared across many industries or a cluster of related industries. The Education and Manpower Bureau commenced preliminary consultation on the first draft of the Specification of Generic Competency Standards in mid-January 2006. There is no concrete plan for the implementation of the specification. In view of the concerns of labour unions, the Education and Manpower Bureau is prepared to hold further discussions with the labour unions and the stakeholders to examine ways to help workers grasp these generic skills for their career development. The Education and Manpower Bureau will also critically revise the pace of development and to work out a new timetable for the work.

24. Some members have expressed concern that people with disabilities and people with learning disability who are relatively single-skilled may be adversely affected under the assessment standards of QF. These groups of people may have difficulties to enter a trade if employers hire an employee on the basis of SCSs of individual industry and generic level descriptors. They have suggested that special arrangements should be made for these groups of people and guidelines should be issued to assessment agencies and training providers requiring them to give flexibility in the assessment of and mode of training for these groups of people.

25. The Administration has responded that under QF, the generic level descriptors aim to provide an objective tool for describing the common features of qualifications at the same level. It will not be used as the standards for entering a particular trade. SCSs are practical-oriented and competency-based, and units of competency at junior levels are mainly subject to practical assessment. The Administration believes that those people who are relatively single-skilled will not be adversely affected. The Administration is of the view that any special arrangement for certain groups of people may create a labeling effect, and may impact on employers' perception of these groups of people and the credibility of QF. The Administration considers it more appropriate to help people with disabilities and people with learning disability to upgrade their skills in order to attain the competencies required.

26. Regarding the suggestion to issue guidelines to assessment agencies and training providers, the Administration has pointed out that in 2001, the Equal Opportunities Commission issued a Code of Practice on Education under the Disability Discrimination Ordinance (Cap. 487) to provide guidelines for educational establishments and educators. The Administration will request the appointed assessment agencies to make reference to the section on the assessment method under the Code of Practice on Education when assessing the skills, knowledge and experience acquired by people with disabilities and people with learning disability for the purposes of QF. The review of the pilot scheme referred to in paragraph 21 above will also cover how appointed assessment agencies assess the skills, knowledge or experience acquired by people with disabilities and people with learning disability for the purposes of QF and related flexible arrangements.

27. As there is a Rehabilitation Advisory Committee under the Health, Welfare and Food Bureau, the Administration has agreed, at the suggestion of members, to brief the Advisory Committee on QF and seek its views on issues relating to people with disabilities under QF.

Appointed assessment agencies

28. To implement the RPL mechanism, assessment agencies will be appointed to assess the skills, knowledge or experience acquired by workers for the purposes of QF. Under clause 8 of the Bill, an assessment agency must be accredited by the Accreditation Authority before it is considered for appointment by SEM. SEM may impose conditions or restrictions in appointing or re-appointing an assessment agency for a specified term. SEM may cancel the appointment or re-appointment of an assessment agency under particular circumstances. If an assessment agency is aggrieved by SEM's decision, the assessment agency may appeal to the Administrative Appeals Board.

29. The Administration has informed the Bills Committee that, having consulted the relevant ITACs, VTC will be appointed as the appointed assessment agency for the first three industries covered in the pilot scheme referred to paragraph 21 above, subject to

accreditation by the Accreditation Authority. With its ample and rich experience in skills training and trade tests, VTC is endowed with adequate facilities and manpower to cater for the implementation of the pilot scheme. As VTC has, under the guidance of the respective ITACs, helped draw up SCSs for the first batch of industries participating in QF, it should be in a good position to assume the role.

30. Members have pointed out that as VTC is also a training provider, its appointment as an appointed assessment agency may give rise to query about its impartiality in conducting assessment.

31. The Administration has responded that the roles of VTC as training provider and assessment agency will be clearly separated in order to avoid conflict of interests. The appointment of VTC as the assessment agency is only for the first three industries covered in the pilot scheme. The Administration will decide whether more than one assessment agency should be appointed for each industry having regard to the results of the review of the pilot scheme.

32. Members have enquired whether a decision to cancel an appointment or re-appointment of an assessment agency should take effect when the decision is under appeal.

33. The Administration has responded that SEM will exercise his powers to cancel the appointment or re-appointment of an assessment agency sparingly and only in exceptional circumstances as follows -

- (a) the Accreditation Authority determines that the agency is no longer competent to assess the skills, knowledge or experience acquired by individuals in relation to the relevant industry or branch of an industry;
- (b) SEM is satisfied that the agency is not able to comply or has not complied with any conditions or restrictions imposed when he appointed or re-appointed the agency, or that the agency has, by its acts or omissions, misconducted itself; or
- (c) SEM is satisfied that the appointment or re-appointment should be cancelled for any other reasonable cause.

34. The Administration has pointed out that the circumstances referred to in paragraph 33 (a) and (b) above are related to the competency of an assessment agency or arises from its misconducts; whereas "other reasonable cause" referred in paragraph 33(c) above may include bankruptcy or voluntary closure of an assessment agency. Given the importance of upholding the quality and credibility of the services provided by appointed assessment agencies under the RPL mechanism, the Administration considers it necessary that a decision to cancel an appointment or re-appointment

should take effect and remain in force until and unless it is reversed or varied by the Administrative Appeals Board.

Accreditation of learning programmes

35. Under the Bill, the Accreditation Authority shall develop and implement the standards and mechanism for academic and vocational accreditation to underpin QF. HKCAA, which will be renamed as the Hong Kong Council for Academic and Vocational Accreditation, will be specified as the Accreditation Authority.

36. Some members have queried why HKCAA is proposed to take on the role of the Accreditation Authority. These members are concerned that HKCAA may give an impression that it is too academic for the said role, and have enquired whether the accreditation of vocational training programmes could be undertaken by the Employees Retraining Board (ERB).

37. The Administration has responded that the main function of ERB is to provide retraining courses and services to eligible workers through a network formed by training providers. As the mission of ERB is to provide retraining services to the unemployed as well as to those on the verge of unemployment, and as ERB has no experience in accreditation of qualifications or courses, it is inappropriate for ERB to perform the role of the Accreditation Authority. On the other hand, HKCAA has ample experience in quality assurance work and is an independent statutory body. It is thus best positioned to undertake the role of the Accreditation Authority.

38. Members have enquired about the details of accreditation and the arrangements for forming accreditation panels.

39. The Administration has explained that under the QF, a Four-stage Quality Assurance Process, comprising initial evaluation, programme validation, programme area accreditation and periodic review, will be adopted for the accreditation of learning programmes. Under the Process, accreditation will be conducted using the "fitness for purpose" approach, with due consideration about the purposes to be achieved by the operator through the learning programme. All operators who wish to offer programmes recognised under QF will have to undergo initial evaluation before their programmes are validated, in order to ensure that the operators satisfy the threshold standards to operate programmes in terms of their organisation management, quality assurance, course development, staffing, financial and physical resources. Operators will be required to present evidence to support their application for accreditation under each stage of the Process. It is envisaged that under normal circumstances, programme validation can be completed within three months for programmes which are relatively simple at the lower QF levels. Guidelines for the Process will be drawn up in consultation with the relevant parties.

40. The Administration has further explained that an independent panel comprising members with relevant subject knowledge and work experience in the discipline will be formed for each accreditation activity. To ensure that all accreditation panels will apply a consistent standard in the accreditation work, the accreditation panels will adopt SCSs drawn up by the respective ITACs and the generic level descriptors as common benchmarks. The panel will make independent judgement with a peer-review and evidence-based approach, with due reference made to the information provided in the accreditation document and gathered in a site visit. The panel will formulate its summative views based on all information provided before and during the accreditation visit and submit its recommendation to the Accreditation Authority in the form of an accreditation report.

41. Regarding the composition of accreditation panels, the Administration has explained that the membership will be determined according to the principles of "peer review", "independent judgement" and "balanced participation". Under the "peer review" principle, members of an accreditation panel will be selected from practitioners who have relevant industrial experience and teaching staff from educational institutions with profound knowledge and understanding about the subject or vocational area being accredited. Under the principle of "independent judgement", members of an accreditation panel will be appointed on their personal capacity and undertake the accreditation in an impartial, fair and open manner. As the Accreditation Authority will make final decision on the accreditation, members of the panel will not be personally liable to the final outcome of the accreditation. In satisfying the principle of "balanced participation", the member should be an experienced academic staff with experience in offering or teaching similar courses, or a practitioner in the relevant industry, and has a good understanding of the industry's training needs.

42. The Administration has also informed the Bills Committee that HKCAA maintains a Register of Subject Specialists from which it draws to assemble accreditation panels and to seek advice on matters related to quality assurance. The Register comprises local and overseas specialists covering a wide spectrum of academic and vocational disciplines. To prepare for the quality assurance role under QF, HKCAA has expanded the Register particularly in the vocational sectors in order to ensure that the skills, knowledge, attributes and standards required of the workforce in the industry will be reflected and the relevance of the courses to the requirements of industries are ensured. As not all subject specialists have relevant accreditation experience, HKCAA has organised training workshops for these experts. Efforts in this regard will continue to ensure that all accreditations are conducted by trained panelists.

Accreditation reports

43. Clause 5(4) of the Bill provides that if the Accreditation Authority decides to vary or withdraw an accreditation report, it shall give notice in writing of the decision to the relevant operator, assessment agency or granting body.

44. The Administration will introduce a Committee Stage amendment (CSA) to the effect that the Accreditation Authority shall also state in the notice the reason for varying or withdrawing the report. Similar amendment will also be made to the proposed new section 5A(4) of the HKCAA Ordinance so that HKCAA will be required to state in the notice to the relevant operator, assessment agency, granting body or individual the reason for varying or withdrawing the report.

Qualifications Register

Protection of personal data

45. Clause 7 of the Bill provides for the maintenance of QR. The Administration has informed the Bills Committee that when consulted, the Office of the Privacy Commissioner for Personal Data (OPCPD) advises that QR may include personal data since it may contain information such as the name of the relevant granting body and the name of the relevant operator. As a granting body or an operator may be an individual, OPCPD considers that the purpose of QR should be stated as specifically as practicable in the Bill to guard against unrelated use of QR data/information. The Administration will add a provision to clause 7 stipulating that the purpose of making QR available to the public is to enable any member of the public to ascertain what qualifications are recognised under QF and to ascertain the particulars of such qualifications.

Correction or updating of an entry of qualification

46. Under clause 7(1) of the Bill, the QR Authority may remove an entry of a qualification from QR if the qualification has been entered into QR by mistake. The Council is specified in the Bill as the QR Authority. Members have suggested that provision should be made to enable the QR Authority to correct or update a qualification which has been mistakenly entered into QR. The Administration has agreed to introduce CSAs in relation to correction of errors in QR.

The QR Authority's liability to refund fees

47. Clause 7(5) of the Bill provides that the QR Authority shall not be liable to refund any entry or extension fee or any part of such fee for abridging the validity period of any entry of qualification which ceases to be eligible for entry into QR. There shall also be no refund for the removal of an entry of a qualification from QR if such qualification has been entered into QR by mistake or in reliance on any misleading or false information.

48. Members consider that there should be refund of fees if the mistake regarding the entry of a qualification into QR is made by the QR Authority itself. Having regard to members' view, the Administration will introduce a CSA to the effect that the provision in clause 7(5) will not cover the removal of a qualification previously entered by mistake.

Reason for decisions of the QR Authority

49. Clause 7(6) of the Bill provides that the QR Authority shall, after making a decision in relation to the entry of a qualification into QR, give notice in writing of the decision to the relevant operator, assessment agency or granting body. The Administration has agreed to move a CSA to the effect that the QR Authority shall also state in the notice the reason for its decision.

Review mechanism

Review of QF-related decisions and determinations (clauses 9 to 12)

50. Under the Bill, an operator, assessment agency or granting body aggrieved by a decision or determination made by the Accreditation Authority or the QR Authority may apply for a review. Such decisions or determinations include -

- (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, as stated in an accreditation report;
- (c) a decision of the Accreditation Authority on the conditions or restrictions subject to which a determination is to have effect, as stated in an accreditation report;
- (d) a decision of the Accreditation Authority to vary or withdraw an accreditation report in circumstances specified under the Bill; and
- (e) a decision of the QR Authority on the entry of a qualification into QR.

Upon receipt of an application for a review, the relevant Authority shall establish a review committee to conduct the review. Upon completion of the review, the committee will submit a report to the Authority concerned setting out its recommendations. The Authority will then make a final decision on the review.

51. Members have raised concern that since members of the review committee will be appointed by the Accreditation Authority or the QR Authority and the final decision on reviews will be made by the same body, the review mechanism may become ineffectual and lack credibility. Members have suggested that an appeal body should be established with the power to reject the final decision of the Authority concerned, and *inter parte* hearing of an appeal should be provided.

52. The Administration has responded that under the Bill, members of the Accreditation Authority or the QR Authority shall not be members of the review committee. The objective of providing a review mechanism is to establish a separate committee to review the assessment panel's original decision. Given that the core issue of the review is closely related to accreditation standards and that members of the Accreditation Authority have not been involved in the panel or the review committee, the Authority concerned should be capable of making a final decision on the review report in a professional, objective and impartial manner.

53. Nevertheless, to address the concern of members, the Administration has agreed to make modifications to the review mechanism to enhance its independence and credibility. Under the revised mechanism proposed by the Administration, an independent Appeal Board, instead of a review committee, will be established under the Bill to consider appeals against QF-related decisions and determinations, i.e. decisions and determinations made by the Accreditation Authority or the QR Authority. The Chairman, Deputy Chairmen and panel members of the Appeal Board will be appointed by SEM. They will not be members of the Accreditation Authority or the QR Authority, and should be persons with expertise or experience in quality assurance or accreditation matters, or with good standing in the field of education or training or in any industry.

54. Regarding the powers of the Appeal Board, after considering an appeal, the Appeal Board may -

- (a) confirm the decision/determination under appeal;
- (b) vary or reverse the decision/determination under appeal, or substitute any other decision/determination for the decision/determination under appeal;
or
- (c) direct the Accreditation Authority or the QR Authority to review the decision/determination under appeal.

The decisions of the Appeal Board referred to in (a) and (b) above will not be subject to further appeal under the Bill. The Appeal Board will notify the Authority concerned and the appellant in writing of its decision and the reasons for the decision. In the case of (c) above, the Authority concerned shall, as directed by the Appeal Board, review the decision/determination under appeal, and notify the appellant and the Appeal Board in writing of its decision together with the reasons. Decisions made by the Authority concerned under such circumstances will be subject to further appeal to the Appeal Board.

55. As regards the hearing of appeal cases, the Appeal Board shall allow parties concerned to make oral representations at a hearing but may, with the consent of the parties to an appeal, consider and decide on the appeal on the basis of written

submissions only. Any hearing held in connection with an appeal to receive oral representations shall be conducted in public, though the Appeal Board may in each case, after consulting the parties to the appeal and being satisfied that it is desirable to do so, direct that the whole or part of the hearing in question shall take place in private. The relevant CSAs will be moved by the Administration.

56. At one stage of the discussion, the Administration proposed to amend the Bill by giving power to the Chairman of the Appeal Board to make rules to provide for the lodging of appeals, and generally for regulating the practice and procedure of the Appeal Board. Members have 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. Members have also questioned whether such rules to be made are subsidiary legislation.

57. The Administration has explained that the appeal rules to be made amount to subsidiary legislation if they are general rules to be applied to all appeals and to lay down the general rules of conduct. Such rules are subsidiary legislation and subject to the scrutiny by the Legislative Council through the negative vetting procedure. The Administration considers that it is not necessary to add an express provision stating that the rules to be made are subsidiary legislation.

58. The Administration has further explained that as there would be a sizable number of panel members to cater for the diverse nature of the appeals, it would be difficult to involve all of them in the rule-making process. Nevertheless, having considered members' views, the Administration will add a provision to establish a rules committee to make the appeal rules. The rules committee shall consist of the Chairman, all Deputy Chairmen, and six to eight members selected by SEM. A provision will also be added to make it clear that no appeal rules made by the rules committee shall come into operation before the expiry of the scrutiny period in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

59. Members have queried whether a provision should be included in the Bill for the removal of the Chairman, Deputy Chairman or panel members from the Appeal Board if the circumstances so warrant.

60. The Administration has explained that section 42(a) of Cap. 1 states that where any Ordinance confers a power or imposes a duty upon any person to make any appointment, then the person having such power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to re-appoint or reinstate, any person appointed in exercise of such power or duty. As the appointment authority under the Bill, SEM may resort to section 42(a) of Cap. 1 to revoke the appointment of the Chairman, Deputy Chairman or panel members if the circumstances so warrant. It is therefore not necessary to include a specific provision for removal.

61. At the request of members, the Administration has undertaken to consider setting out the time frame for handling appeals by the Appeal Board in the rules to be made.

Review of non-QF-related decisions and determinations (clause 35)

62. The proposed new Part IVA of the HKCAA Ordinance, added by clause 35 of the Bill, provides for the review of the non-QF-related accreditation decisions and determinations made by the Council. The Administration has explained that non-QF-related accreditation decisions and determinations refer mainly to the Council's assessment of individuals' qualifications on which the Council gives a non-binding professional opinion on the comparability of such academic qualifications, e.g. for recruitment or further education purposes. They also cover the accreditation services provided by the Council for certain statutory and professional bodies regarding their professional development programmes. An aggrieved party may apply for a review of the Council's decisions or determinations relating to non-QF-related accreditation reports.

63. The Administration will amend the proposed new section 17C(1) of the HKCAA Ordinance to make it clear that a review committee may determine any matter of practice or procedure where no provision governing such matter is made in the HKCAA Ordinance or in any rules made under section 22(2)(aa) of the Ordinance.

64. The proposed section 17B(3)(b) of the HKCAA Ordinance 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.

65. For the membership of the review committee, members have suggested not to specify "commerce" and "finance" in the provision as the expression "or in any industry" would have covered these two and other industries. The Administration will move CSAs to delete the references to "commerce" and "finance" in the proposed section 17B(3)(b) of the HKCAA Ordinance.

66. The Administration will also introduce a CSA to make it clear that counsel and solicitors, unless in specified circumstances, are not entitled to be heard before a review committee. Similar CSAs will also be introduced in the appeal mechanism under Part 3 of the Bill.

Publicity

67. At the request of members, the Administration has undertaken to step up publicity on the differences between the appeal mechanism for QF-related decisions/determinations and the review mechanism in respect of non-QF-related decisions/determinations.

Advertisements relating to the Qualifications Framework and the Qualifications Register

Information required in an advertisement

68. Under clause 13(1), no person shall publish or cause to be published an advertisement which claims, represents or holds out that a qualification obtainable from a granting body or from the completion of a learning programme is recognised under QF unless all of the following information is contained in the advertisement -

- (a) the name of the qualification;
- (b) the name of the relevant granting body;
- (c) the description of the relevant learning programme, and the name of the relevant operator (if different from the granting body), if applicable;
- (d) the relevant level of QF under which the qualification is recognised;
- (e) the registration number assigned by the QR Authority for the entry of the qualification in QR; and
- (f) the validity period of the entry.

69. Members have queried whether it is necessary to require an advertisement relating to QF and QR to contain information on all these items, given that a contravention of clause 13(1) would constitute an offence.

70. Having considered members' views, the Administration will introduce CSAs to reduce the information items required in an advertisement relating to QF and QR such that only the QF level of the relevant qualification, the registration number of the relevant qualification, and the validity period of the relevant qualification will be required (paragraph 68(d) to (f) above refers). The explanations given by the Administration are as follows -

- (a) QF level provides important information on the order of a qualification against the seven-level hierarchy. As qualification titles have not yet been standardised in Hong Kong and courses of different QF levels may be offered under the same title, it is important to specify the QF level of the qualification in the advertisement to enhance the comparability and transparency of individual qualifications;
- (b) the registration number of a qualification will enable the public to verify the information contained in the advertisement against that in the QR and ascertain whether or not the qualification is recognised under QF; and

- (c) a qualification is registered on QR for a specified period, i.e. the validity period. A qualification obtained by a learner is recognised under QF only if the learner enrolls for that qualification within the specified validity period. It is therefore important that the validity period of the relevant qualification is clearly stated in the advertisement so as to provide clear information to learners.

Defence provision

71. Clause 13 of the Bill provides that it is an offence for any person to publish or cause to be published an advertisement which wrongly claims, represents or holds out that a qualification is recognised under QF; or that a person or body is an appointed assessment agency. Under clause 13(4)(a)(iii), it shall be a defence for a person charged with such an offence to prove that at the time of the publication of the advertisement, he believed on reasonable grounds that all the information required by clause 13(1)(a) was contained in the advertisement and corresponded to the information contained in the relevant entry of a qualification in QR, or that the relevant assessment agency was an appointed assessment agency, as the case may be.

72. Members have expressed concern that the defence under clause 13(4)(a)(iii) would put a heavy burden of proof on those engaged in the publishing or advertising business as they are not familiar with QF or QR.

73. In view of members' concern, the Administration has proposed a CSA to the effect that it shall be a defence for the person charged with an offence under clause 13 if he proves that he had no reason to believe that he would be committing an offence by publishing or causing to be published the advertisement. The Administration has explained that to avail himself of the defence, the person charged only needs to prove that in dealing with the advertisement, he did not have any reason which caused him to believe that by publishing the advertisement he would be breaching the law. The person needs not take the specific steps prescribed in clause 13(4)(a)(iii) of the Bill, other than the normal procedures a publisher or advertiser is expected to take, e.g. requiring the completion of an order form which includes terms and conditions that the advertiser should warrant that the advertisement submitted for publication does not contravene the laws of Hong Kong, or infringe the copyright or other intellectual property right of any third person, business or corporation.

74. Nevertheless, having regard to members' suggestion to improve the proposed CSA to clause 13(4)(a)(iii), the Administration has agreed to amend the clause to the effect that it shall be a defence for the relevant person charged with an offence under clause 13(3) if he proves that he published the advertisement in reliance on a statement made to him by the person who caused it to be published to the effect that the publication would not constitute an offence under clause 13(3) and it was reasonable for him to rely on the statement.

Misleading or false statement, representation or information

75. Clause 14 of the Bill specifies that any person who, either orally or in writing, makes any statement or representation or furnishes any information to the Accreditation Authority, the QR Authority or a review committee in connection with the performance of its functions under the Bill which the person knows is misleading or false in a material respect commits an offence and is liable on conviction to a fine at level 5 (currently \$50,000).

76. In response to the enquiry of the legal adviser to the Bills Committee, the Administration will introduce CSAs to ensure that misleading or false statements, representations or information made to the following parties will also be covered by clause 14 -

- (a) a person or an organisation with whom the Accreditation Authority or the QR Authority jointly performs a function in accordance with clause 4(2) or clause 6(2) respectively;
- (b) a person or group of persons to whom the performance of a function is delegated by the Accreditation Authority under clause 4(3); and
- (c) the Appeal Board.

77. Similarly, CSAs will be introduced by the Administration to the proposed new section 23A of the HKCAA Ordinance to the effect that misleading or false statements, representations or information made to the following parties will also be covered by the section -

- (a) a person or an organisation with whom the Council jointly performs a function in accordance with new section 5(1)(b); and
- (b) a committee, person or group of persons to whom the performance of a function is delegated by the Council under section 8.

Power of entry, search, seize, etc.

78. Clause 15 of the Bill provides an inspection officer or a Police officer with the power of investigating the offences under clauses 13 and 14. Members have queried whether it is necessary to appoint inspection officers as investigation could be conducted by the Police.

79. The Administration has explained that inspection officers will be public officers authorised by SEM in writing either generally or in any particular case for the purposes of clause 15. The Police has advised that it may not be able to accord priority to the

investigation work under the Bill. It is therefore necessary to appoint non-Police officers to conduct investigation. The Administration has pointed out that the investigation powers specified in the Bill are similar to those specified in other Ordinances, namely, the Education Ordinance (Cap. 279) and the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) in which non-Police officers are appointed to exercise the relevant investigation powers.

80. The Administration has assured the Bills Committee that the investigation power under the Bill will not be exercised lightly, as an inspection officer or a Police officer is required to obtain a warrant from a magistrate before exercising such powers.

Composition of the Hong Kong Council for Academic and Vocational Accreditation

81. Under the HKCAA Ordinance, HKCAA consists of 15 to 21 members appointed by the Chief Executive. There are three categories of members, namely, overseas academics, local academics and local non-academics who have experience in commerce, industry or any profession. Around two-thirds of the members come from an academic background, and one-third from non-academic background. With the expanded scope of activities of HKCAA, which will be renamed as the Hong Kong Council for Academic and Vocational Accreditation, the Administration proposes that the Council should maintain its existing size but with a wider spectrum of expertise and background. The restriction on the number of appointed members who are academics will be removed.

82. Some members consider that representatives from labour unions should be appointed to the Council to represent the views of employees. Members have also enquired about the procedures in appointing members to the Council.

83. The Administration has explained that as the Council will be responsible for the quality assurance role under QF, the Council has to take up more diverse accreditation work and provide service for education and training providers of different sizes and nature. As such, members appointed to the Council should cover a wide range of expertise in different sectors and industries, including representatives of employees with expertise in vocational education and training.

84. Regarding the appointment procedure, the Administration has advised that the Chief Executive has delegated his power to SEM for making appointments to the Council. SEM will consider the occupational background, expertise and contribution that prospective appointees may offer in quality assurance, and their past and current public offices, if any. Upon acceptance of the appointment by the relevant persons, the list of appointment will be published in the Gazette.

85. For the purpose of consistency, the Administration will move CSAs to delete the references to "commerce" and "finance" regarding the membership of the Council (paragraph 65 above refers).

Course accreditation fees

86. Under clause 4 of the Bill, the Accreditation Authority may determine the fees to be charged for the conduct of accreditation tests and charge such fees. Members have expressed concern that if the accreditation fees for learning programmes are too high, the fees may be transferred to the learners. They have enquired about the fee charging policy and how the fees to be charged by the Accreditation Authority, i.e. the Council, will be monitored.

87. The Administration has explained that HKCAA, as a statutory body, is self-financed and does not receive recurrent subvention from the Government. It is non-profit making and charges fees for providing the accreditation services to recover costs. The current accreditation fee charged by HKCAA for a particular service is composed of three elements, namely, the staff cost, direct cost and overheads. In general, the accreditation fee is the sum of the three cost elements. The formula allows the flexibility to offer discount to clients whenever there can be some savings on account of, for example, combined accreditation exercises. From past experience, a discount of 20% to 40% can be made when two validations of similar programmes can be arranged concurrently or consecutively, and the same or majority of panel members can be involved in both validation activities. Over the last few years, HKCAA has reduced the level of accreditation fees by about 30% by streamlining the accreditation process. Also, there has been an increasing number of combined accreditation exercises conducted by one panel.

88. The Administration has assured the Bills Committee that the overall development costs for the Council to establish a quality assurance mechanism to underpin QF will be borne by the Education and Manpower Bureau. They will not be transferred to the accreditation fees. With the implementation of a much streamlined and "fitness for purpose" quality assurance process under QF, the fees incurred will correspond to the scale and nature of the accreditation exercise. Such a new quality assurance approach under QF will give room to further reduction of the current accreditation fees incurred under the existing process.

89. Regarding the monitoring of fees charged, the Administration has pointed out that under clause 34 of the Bill, the Council shall, not later than five months before the close of each financial year, submit, among other things, a statement of its fee charging policy in relation to the accreditation exercises for the following financial year to SEM for his prior approval. This serves to monitor the Council's fee charging while allowing flexibility for the Council to determine its accreditation fee in consultation with the education and training providers.

90. At the suggestion of members, the Administration has agreed to introduce a CSA to the effect that the fees to be charged by the Accreditation Authority will be subject to the prior approval of SEM. For the purpose of consistency, the Administration will also

introduce similar amendments to the proposed new section 5(2)(e) of the HKCAA Ordinance so that the accreditation fees charged by the Council for non-QF-related work will also be subject to SEM's prior approval. Amendments will also be made to require the Council to submit a schedule of its accreditation fees and review fees to be determined for the next financial year for SEM's approval.

Financial assistance to support the implementation of Qualifications Framework

91. Members have asked whether financial assistance will be provided by the Government to the stakeholders to support the implementation of QF.

92. The Administration has responded that given the additional expenditure to be incurred by the key stakeholders arising mainly from the quality assurance measures, (e.g. accreditation and assessment), stipulated by the Bill, the Administration proposes to provide some form of assistance to three categories of stakeholders. They are education and training providers which are non-self-accrediting institutions and have to undergo accreditation by the Council, assessment agencies to be appointed by SEM to conduct RPL, and employees who undergo RPL assessment for further learning purpose. To avoid creating a recurrent financial burden on the Government, the financial incentives to be introduced will be provided on a non-recurrent basis and one-off in nature. They will be subject to the approval by the Finance Committee after the enactment of the Bill and review after a specified period to ascertain their effectiveness. The proposed financial assistance will include -

- (a) accreditation grants for self-financing programmes to cover the full cost of the initial evaluation of training providers and 50% to 75% of the programme validation fees;
- (b) full subsidy of accreditation fees of courses subsidised by the Education and Manpower Bureau;
- (c) a grant to assist non-profit making training providers to undergo Programme Area Accreditation to obtain self-accrediting status in specified programmes areas;
- (d) a time-limited discount of 50% of the fee to cover the cost incurred by the QR Authority in registering and maintaining the qualifications on QR;
- (e) a one-off start-up grant to assist assessment agencies to develop the assessment mechanism and set up the necessary facilities;
- (f) a 50% subsidy of the accreditation fee incurred by the assessment agency for determining its competence in performing RPL assessment functions; and
- (g) a 50% subsidy of the RPL assessment fee, subject to a maximum of \$1,000, to an employee upon his/her passing the RPL assessment and completion of a QF-recognised training course.

93. The Administration has informed members that the Continue Education Fund is under review, and it is its intention to extend the coverage of the Fund to support employees who pursue further training under QF.

Change in the name of the Hong Kong Council for Academic Accreditation

94. Under the Bill, the name of HKCAA is proposed to be changed to Hong Kong Council for Academic and Vocational Accreditation (香港學術及職能評審局). However, taking into account members' views that the Chinese term "職能評審" might not be able to fully reflect the intended meaning of "Vocational Accreditation", the Administration will introduce CSAs to change the name of the Council proposed in the Bill to Hong Kong Council for Accreditation of Academic and Vocational Qualifications (香港學術及職業資歷評審局).

Committee Stage amendments

95. Apart from the CSAs discussed in the above paragraphs, the Administration will move other amendments to the Bill for the purpose of clarity, refinement or consistency.

Follow-up actions by the Administration

96. The Administration has undertaken -

- (a) to report to the Panel on Manpower the progress of implementation of QF in individual industries on a half-yearly basis (paragraph 9 above refers);
- (b) to state in the speech to be made by SEM during the resumption of Second Reading debate on the Bill the point referred to in (a) above, and to reaffirm that QF will not be implemented in a particular industry unless a consensus is reached within that industry (paragraph 9 above refers);
- (c) to report to the Panel on Manpower the results of the review of the pilot scheme on RPL for the Printing and Publishing, Watch and Clock, and Hairdressing industries (paragraph 21 above refers); and
- (d) to step up publicity on the differences between the appeal mechanism for QF-related decisions/determinations and the review mechanism in respect of non-QF-related decisions/determinations (paragraph 67 above refers).

Consultation with the House Committee

97. The Bills Committee consulted the House Committee on 13 April 2007 and obtained its support for the Second Reading debate on the Bill to be resumed at the Legislative Council meeting on 2 May 2007.

Council Business Division 2
Legislative Council Secretariat
23 April 2007

**Bills Committee on
Accreditation of Academic and Vocational Qualifications Bill**

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon LEE Cheuk-yan
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Dr Hon Joseph LEE Kok-long, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS

Total: 16 Members

Clerk Mrs Sharon TONG LEE Yin-ping

Legal Adviser Mr Stephen LAM

Date 22 July 2005

**Bills Committee on
Accreditation of Academic and Vocational Qualifications Bill**

A. Organisations/individuals which/who have given oral representation to the Bills Committee

1. Hong Kong Printing Industry Workers Union
2. Federation of Hong Kong Industries
3. The Federation of Hong Kong & Kowloon Labour Unions
4. The Professional Validation Centre of Hong Kong Business Sector
5. Catering and Hotels Industries Employees General Union
6. Training Policy Committee, Hong Kong Confederation of Trade Unions
7. The Concern Alliance on Training & Retraining
8. Vocational Training Committee, Hong Kong Federation of Trade Unions
9. Eating Establishment Employees General Union
10. The Professional Validation Council of Hong Kong Industries
11. Hong Kong Department Stores & Commercial Staff General Union
12. Institute of Print-Media Professionals
13. The Hong Kong Printers Association
14. Hong Kong College of Technology
15. Continuing Professional Development Alliance
16. School of Professional and Continuing Education, University of Hong Kong
17. Ms LEE Ming-pui, Mavis
18. Mr LEUNG Kwok-wah, Wilson

19. Mr Peter HO
20. Mr LAU Hoi-tung
21. Mrs Agnes MAK
22. Mr Colin C L CHUNG

B. Organisations/individuals which/who have provided written submissions only

1. Hong Kong Institute of Technology
2. The Council of Hong Kong Non-Profit Making Tertiary Institutions
3. Construction Industry Training Authority
4. Dr Winnie TANG
5. Leo Hair and Beauty Training Centre
6. Mr LEE King-hei
7. Mr PANG Ying-yeung
8. Asian Academy for Sports & Fitness Professionals
9. Hong Kong General Union of Lift and Escalator Employees
10. Hong Kong Hair Designers Associations
11. Hong Kong IT Alliance Limited
12. The Hong Kong School of Motoring Ltd.
13. Hong Kong Shipbuilding, Machinery Manufacturing and Steel Industries Employees General Union
14. Hong Kong Travel & Tourism Training Centre Limited
15. Estate Management and Security Employees Union, Neighbourhood and Worker's Service Centre
16. Tsuen Wan Retraining Centre, Neighbourhood and Worker's Service Centre

17. New Territories Association Retraining Centre
18. Vocational Training Council
19. Federation of Beauty Industry (H.K.), The Cosmetic & Perfumery Association of Hong Kong Ltd., International CICA Association of Esthetics, Association of Professional Aestheticians International, Association of International Beauty Therapists Ltd.
20. Hong Kong Association for Specific Learning Disabilities
21. Hong Kong and Kowloon Clock and Watch Trade Workers Union