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Paper for the House Committee meeting on 11 March 2005

**Report of the Bills Committee on
Vocational Training Council (Amendment) Bill 2004**

Purpose

This paper reports on the deliberations of the Bills Committee on Vocational Training Council (Amendment) Bill 2004.

The Bill

2. The Vocational Training Council (Amendment) Bill 2003 (the 2003 Bill) was introduced in the Legislative Council (LegCo) on 14 January 2004, but lapsed upon the end of the second term, before it was scrutinised by LegCo. The Bill, as now re-introduced, is the same as the 2003 Bill.

3. The Bill seeks to -

- (a) enable the Vocational Training Council (VTC) to perform its statutory functions outside Hong Kong;
- (b) provide that any one of the Deputy Chairmen may sign the statement of income and expenditure and the balance sheet if the Chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of a Chairman; and
- (c) replace the reference of “disabled person” in the English Text of the Vocational Training Council Ordinance (the Ordinance).

The Bills Committee

4. At the House Committee meeting on 15 October 2004, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

5. Under the chairmanship of Ir Dr Hon Raymond HO Chung-tai, the Bills Committee has held four meetings with the Administration. The Bills Committee has met with 11 staff associations of VTC. The names of these associations are listed in **Appendix II**.

Deliberations of the Bills Committee

Objects and functions of VTC

6. The proposed section 6(3) seeks to permit VTC to perform any of its functions under section 6 of the Ordinance in Hong Kong or elsewhere. Under the proposed section 6(4), VTC may not perform any of its functions outside Hong Kong using any money appropriated by LegCo under section 12(a) unless the functions so performed are for the training and education of Hong Kong persons.

7. Some members have queried whether the proposed provisions are consistent with the objects of VTC, and whether the powers conferred by these provisions would exceed the objects provisions in section 5. These members have pointed out that section 5(a) expressly states that the object of VTC is to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the development needs of Hong Kong, there is no reference for VTC to carry out its activities outside Hong Kong. As the participants of extra-territorial activities to be conducted by VTC may include non-Hong Kong persons, it is questionable whether the extension of a power to provide training to non-Hong Kong persons outside Hong Kong and whether the use of public money to finance such activities for the education and training of non-Hong Kong persons are within the scope of the objects provisions.

8. The Administration has explained that the policy intent of the Bill is to empower VTC to conduct extra-territorial activities for the better carrying out of its functions, which are consistent with its objects. Section 5 of the Ordinance sets out the objects of VTC. However, the section does not specify any territorial limit of the objects. The Bill seeks to expressly enable VTC to perform its functions outside Hong Kong, so as to remove any uncertainty or presumption in respect of the territorial limit of the VTC's functions. Section 6 of the Ordinance which prescribes the functions of VTC is proposed to be amended to remove the uncertainty or presumption. With the expressed power conferred by the proposed section 6(3), it is not necessary to rely on the incidental power provided by section 6(2) of the Ordinance for VTC to perform its

functions outside Hong Kong. The Administration considers that there is no need to amend the objects provisions, i.e. section 5 of the Ordinance.

9. The Administration has further explained that under section 5(a) of the Ordinance, VTC is to advise the Chief Executive on the technical training suited to the development needs of Hong Kong. This will remain central to the work of VTC. For Hong Kong to remain as a regional hub of commerce and industry and an international city, VTC's work would also need to be expanded to cover the training needs and opportunities arising from Hong Kong's economic activities beyond the territory, particularly onto the Mainland. The Administration has stressed that expanding the power of VTC to conduct extra-territorial activities would bring about benefits to Hong Kong as a whole. These include meeting the trained and qualified manpower requirements of Hong Kong business establishments with operations in the Mainland, providing useful exposure to the trainees and better equipping workers for employment in the Mainland, as well as facilitating the bilateral exchange of experience and expertise in vocational education and training between Hong Kong and the Mainland, thereby contributing to the work of VTC in this area. These are in tune with the spirit behind the objects of VTC, and are considered within the meaning of section 5(a), and in line with the object under section 5(b) which provides that VTC is to institute, develop and operate schemes for training operatives, craftsman, technicians and technologists needed to sustain and improve industry.

10. In response to the concern about the use of public money by VTC when conducting extra-territorial activities, the Administration has proposed to amend the proposed section 6(4) to expressly provide that if VTC performs any of its functions outside Hong Kong for the training or education of persons other than Hong Kong persons, no subsidy shall be made available by the Government towards the performance of such functions and no subvention provided by the Government for VTC shall be used to subsidise such function.

11. The Administration has explained that the proposed section 6(4), as amended, will allow VTC to perform its functions outside Hong Kong for the training and education of persons who are not Hong Kong persons. However, no subsidy from public sources will be provided to subsidise non-Hong Kong persons participating in the extra-territorial activities to be conducted by VTC. The spirit is that any funds and property of VTC originated from public sources should not be used to subsidise activities for non-Hong Kong persons. Activities for non-Hong Kong persons will be carried out on a self-financed basis. Flexibility will be given to VTC to set out its own costing in respect of the extra-territorial activities.

Definition of "Hong Kong person"

12. Under the proposed section 6(4), persons other than Hong Kong persons may enroll in the proposed extra-territorial activities to be conducted by VTC. However, no subsidy will be provided by the Government to subsidise non-Hong Kong persons

participating in these activities. “Hong Kong person” is defined in the proposed section 6(5) as a person who –

- (a) holds an identity card issued under the Registration of Persons Ordinance (Cap. 177); and
- (b) (i) is not subject to any condition of stay imposed in respect of the person under the Immigration Ordinance (Cap. 115), other than a limit of stay; and
- (ii) is not in breach of any limit of stay.

13. Members have expressed concern about the definition of “Hong Kong person”, as the term is sensitive in nature and may be subject to challenge in its interpretation. Members have asked whether the definition is consistent with that in other legislation and the implications if the proposed section 6(5)(b) is deleted.

14. The Administration has responded that the definition of “Hong Kong person” is not used in other legislation, and is provided in the Bill for the purpose of the proposed section 6(4). The policy intent is that only Hong Kong persons referred to in the proposed section 6(5) will be eligible to participate in the proposed extra-territorial activities on a subsidised basis, and activities for non-Hong Kong persons will be carried out on a self-financed basis. The Administration has further explained that if the proposed section 6(5)(b) is deleted, persons such as those holding work visas or student visas would then become eligible, thus entailing public resources.

15. Having regard to members’ concern, the Administration has agreed to amend the term “Hong Kong person” to “eligible person”.

Implications of the proposed extra-territorial activities

16. While members are in support of the policy intent of the provision of extra-territorial activities by VTC, some members have expressed concern about the implications of the proposed activities on the existing staff of VTC, in particular that the proposal, if implemented, may adversely affect the job security of existing VTC staff. These members consider that should there be a need to employ staff for conducting activities outside Hong Kong, priority should be given to Hong Kong people.

17. The Administration has assured members that the proposed expansion of VTC’s services outside Hong Kong will not adversely affect the job security and terms of service of existing VTC staff. VTC staff will be deployed to work outside Hong Kong only if they are willing and if they possess the necessary skills and expertise required of the jobs. The Administration has assured members that where it is necessary to recruit additional staff for the expanded activities outside Hong Kong, and where a Hong Kong person and a non-Hong Kong person are found equally suitable for appointment for

certain training or educational programmes, VTC will give priority to the Hong Kong person.

18. Regarding the arrangements for VTC staff deployed to undertake extra-territorial activities, the Administration has advised that such staff will remain to be staff of VTC and will be covered by the employees' compensation insurance taken out by VTC. In response to members' concern about employees' protection, the Administration has agreed to seek professional advice on the employees' compensation insurance of VTC staff working outside Hong Kong before implementation.

Express powers to take part in joint venture and corporate dealings

19. The Administration has explained that the Bill seeks to empower VTC to perform its functions outside Hong Kong not only on its own, but also in partnership with other organisations. The legal adviser to the Bills Committee has pointed out that there is no express provision in the Ordinance or in the Bill to permit VTC to participate in partnership, corporate holdings and joint venture and to carry out the extra-territorial activities either on its own or with outside parties through these vehicles.

20. The Administration has agreed to add provisions to section 6(2) to empower VTC to participate in partnership, corporate holdings and joint venture, and further empower VTC to provide for profits or otherwise educational programs as well as to make a loan to other person in furtherance of VTC's objects.

Operation of extra-territorial activities

Type of extra-territorial activities

21. Regarding the type of activities to be run by VTC outside Hong Kong, the Administration has advised that the activities which VTC plans to operate include –

- (a) job attachments in the Mainland for youths;
- (b) provision of training and skills certification programmes; and
- (c) award bearing/professionally recognised programmes.

22. The Administration has explained that some programmes, for example, training and job attachment for non-engaged youth, will be provided to Hong Kong young people only, whereas other types of programmes may be opened to non-Hong Kong people who may or may not be employed by Hong Kong-based business operations in the Mainland. Most of the programmes operated in the Mainland will be run on a self-financed basis without Government subsidy, except, for example, those programmes for the non-engaged Hong Kong youths. The Administration has

informed members that the training and education programmes may also be conducted in elsewhere when the need arises.

Operational arrangements

23. The Administration has advised that it is the intention of VTC to carry out extra-territorial activities through limited companies or in partnership with third parties through these companies. The liabilities incurred in carrying out such activities will be borne by the companies as independent legal entities. The Administration will introduce an amendment to the proposed section 6(3) to enable VTC to carry out its functions through an agent, which refers to the limited company for carrying out extra-territorial activities.

24. Members have expressed concern that there might be complications in the accounting and tax arrangements especially in the Mainland if the companies concerned have income generated both in Hong Kong and in the Mainland. Members have asked whether and how surpluses accumulated from the operation of extra-territorial activities could be transferred to VTC. Members have suggested that the arrangement should be set out in the legislation. Members are also concerned about the financial arrangement when a loss is incurred.

25. The Administration has explained that separate accounts for VTC's subsidiary companies for conducting extra-territorial activities will be maintained. To minimise financial risks, VTC will not undertake any programme unless the "break-even point" test is met, i.e. reaching the level of admission or participation that will enable the programmes to be financially self-sufficient. In the unlikely event that a loss is incurred, VTC could offset the loss by the accumulated surpluses from the account on the self-financed activities in Hong Kong. Should the need arise, VTC would make a loan at cost to its subsidiary company. VTC will seek advice from legal and accounting professionals to devise the most appropriate arrangements.

26. The Administration has further explained that VTC intends to use surpluses accumulated from operating these activities to fund its other activities. The transfer of funds, including any surpluses accumulated under the VTC's subsidiary companies, is an administrative matter and it is not necessary for it to be spelt in the legislation. VTC will seek advice from its legal and accounting advisors on these matters.

Provision for one of the Deputy Chairmen to sign the statement of income and expenditure and balance sheet

27. The proposed section 17(4) of the Ordinance provides that any one of the Deputy Chairmen of VTC could sign the statement of income and expenditure and the balance sheet if the Chairman is absent from Hong Kong or when the Chairman is unable to exercise the powers or perform the duties of a Chairman. Some members have expressed concern that the provision for such a power to a Deputy Chairman might give

rise to a situation where the Deputy Chairman might bypass the Chairman in giving approval to financial statement and balance sheet.

28. The Administration has explained that the policy intent of the proposed provision is merely to allow flexibility for VTC to conduct the procedural matter of signing the financial statement and the balance sheet. The Deputy Chairman's signing the financial statement and the balance sheet is conditional, i.e. either when the Chairman is absent from Hong Kong or is for any other reason unable to exercise the powers or perform the duties of a Chairman. In practice, the examination of the VTC's financial statement and the balance sheet follows a well-established and strict procedure. They have to be deliberated by the VTC's Finance Committee and then VTC before acceptance. The signing of the statement and the balance sheet by the Chairman is procedural in nature. However, in the circumstances that the Chairman is unable to undertake this task for the aforesaid reasons, it is proposed that the job could be done by one of the Deputy Chairmen in order not to hold up the submission of the statement and the balance sheet.

Committee Stage amendments

29. The Administration will move amendments to the Bill (paragraphs 10, 15, 20 and 23 above refer). A copy of the draft Committee Stage amendments (CSAs) is in **Appendix III**.

Recommendation

30. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 6 April 2005, subject to the CSAs to be moved by the Administration.

Follow-up action by the Administration

31. The Administration has undertaken that –
- (a) the job security and terms of service of the existing staff will not be adversely affected by the proposed expansion of VTC's services outside Hong Kong (paragraph 17 above refers);
 - (b) VTC staff will be deployed to work outside Hong Kong only if they are willing and if they possess the necessary skills and expertise required of the jobs (paragraph 17 above refers);

- (c) where it is necessary to recruit additional staff for the expanded activities of VTC outside Hong Kong, and where a Hong Kong person and a non-Hong Kong person are found equally suitable for appointment for certain training and educational programmes, VTC will give priority to the Hong Kong person (paragraph 17 above refers);
- (d) VTC staff deployed to undertake extra-territorial duties will be covered by employees compensation protection and professional advice will be sought on such protection before implementation (paragraph 18 above refers); and
- (e) VTC will seek professional advice to devise the most appropriate arrangements for the accounting system and the transfer of surpluses (paragraphs 25 and 26 above refer).

Advice Sought

32. Members are invited to note the deliberations of the Bills Committee and the recommendation of the Bills Committee in paragraph 30 above.

Council Business Division 2
Legislative Council Secretariat
10 March 2005

**Bills Committee on
Vocational Training Council (Amendment) Bill 2004**

Membership list

Chairman	Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Members	Dr Hon LUI Ming-wah, JP Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon CHEUNG Man-kwong Hon CHAN Yuen-han, JP Hon Jasper TSANG Yok-sing, GBS, JP Hon Howard YOUNG, SBS, JP Hon LI Fung-ying, BBS, JP Hon WONG Kwok-hing, MH Hon WONG Ting-kwong, BBS Hon Patrick LAU Sau-shing, SBS, JP
	Total: 11 Members
Clerk	Mrs Sharon TONG LEE Yin-ping
Legal Adviser	Miss Kitty CHENG
Date	4 November 2004

Bills Committee on Vocational Training Council (Amendment) Bill 2004

Organisations which have given oral representation to the Bills Committee

1. Hong Kong Institute of Vocational Education Teachers' Association
2. Technical Education Graduate Staff Association
3. Federation of Trade Unions in Vocational Training Council
4. Vocational Training Council Instructors & Training Centre Teaching Staff Association
5. Association of Inspectors of Apprentices
6. Hong Kong Institute of Vocational Education Staff Association
7. Vocational Training Council Skills Centres Staff Association
8. Vocational Training Council Industrial Training Officer Grade Association
9. Vocational Training Council Clerical Staff Association
10. Education and Manpower Bureau Technical Education and Industrial Training Staff Association
11. The VTC Executive Officer Grade Association

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By adding "to revise the scope of the functions, taking into account the performance of functions outside Hong Kong;" after "Hong Kong;".
4	(a) By renumbering the clause as clause 4(2). (b) By adding - "(1) Section 6(2) is amended - (a) in paragraph (v), by repealing "and"; (b) in paragraph (w), by repealing the full stop and substituting a semicolon; (c) by adding - "(x) enter into a partnership or other form of joint venture with other persons; (y) acquire, hold and dispose of interests

in other corporate
bodies and form or
take part in forming
corporate bodies;

(z) provide for profit
or otherwise
training or
educational
programmes,
advisory,
consultancy,
research or other
related services;
and

(za) make a loan to any
person on such terms
as it considers
appropriate in
furtherance of its
objects or the
exercise of its
functions."."

- 4(2)
- (a) In the proposed section 6(3), by adding
"through an agent or" after "own or".
 - (b) By deleting the proposed section 6(4) and
substituting -

“(4) If the Council performs any of its functions outside Hong Kong for the training or education of a person (other than an eligible person), no subsidy shall be made available by the Government towards the performance of such functions and no subsidy provided by the Government to the Council shall be used to subsidize the performance of such functions.”.

- (c) In the proposed section 6(5), by deleting ““Hong Kong person” (香港人)” and substituting ““eligible person” (合資格的人)”.