

立法會
Legislative Council

LC Paper No. LS5/04-05

**Paper for the House Committee Meeting
on 15 October 2004**

**Legal Service Division Report on
Vocational Training Council (Amendment) Bill 2004**

I. SUMMARY

1. **Objects of the Bill**
- (a) To enable the Vocational Training Council ("VTC") to perform its statutory functions outside Hong Kong;
 - (b) to provide that any one of the Deputy Chairmen may sign the statement of income and expenditure and 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.

The Vocational Training Council (Amendment) Bill 2003 ("the 2003 Bill") was introduced into the Legislative Council on 14 January 2004. Pursuant to a decision of the House Committee at its meeting held on 16 January 2004, a Bills Committee was formed to scrutinize the 2003 Bill. However, owing to the unavailability of a Bills Committee slot, the 2003 Bill was not enacted and it lapsed upon the dissolution of the second term of the Legislative Council. The Bill, as now re-introduced, is the same as the 2003 Bill.

2. **Comments**
- The effect of proposed section 6(3) and (4) seems to be that VTC may not perform any of its statutory functions outside Hong Kong for the education and training of people other than Hong Kong persons only if such performance is financed by the moneys appropriated by the Legislative Council. It follows that VTC may utilize the capital and income accumulated under section 12(b), (c) and (d) of VTCO to finance the extra-territorial activities which may or may not be for the education and training of Hong Kong persons.
3. **Public Consultation**
- VTC has consulted all its Training Boards, which comprise stakeholders of relevant industry sectors, and they support the proposal for VTC to engage in extra-territorial activities.
4. **Consultation with LegCo Panel**
- On 20 November 2003, the LegCo Panel on Manpower was consulted on the Administration's proposals in the Bill. Information on the number of Hong Kong based firms which operated in the Mainland and the number of Hong Kong people employed there, the workers' length of stay in the Mainland, the number of trips made by the workers to Hong Kong, and whether they were on permanent or short-term contracts has been provided by the Administration in response to a member's question. (para. 15 of this Report).
5. **Conclusion**
- In view of the policy issues which have not been addressed, members may wish to consider setting up a Bills Committee to scrutinize the Bill as was the case in the last term.

II. REPORT

Objects of the Bill

To amend the Vocational Training Council Ordinance (Cap. 1130) ("VTCO") 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 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 VTCO by "person with a disability".

LegCo Brief Reference

2. EMB CR 1/3231/81 issued by the Education and Manpower Bureau in October 2004.

Date of First Reading

3. 13 October 2004.

Background

4. The Vocational Training Council (Amendment) Bill 2003 ("the 2003 Bill") was introduced into the Legislative Council on 14 January 2004. Pursuant to a decision of the House Committee at its meeting held on 16 January 2004, a Bills Committee was formed to scrutinize the 2003 Bill. However, owing to the unavailability of a Bills Committee slot, the 2003 Bill was not enacted and it lapsed upon the dissolution of the second term of the Legislative Council. The Bill, as now re-introduced, is the same as the 2003 Bill.

Comments

VTC to engage in extra-territorial activities

5. VTCO provides for the establishment, functions and management of a Vocational Training Council. Under section 5 of VTCO, the objects of VTC are -

- (a) to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the developing needs of Hong Kong;
- (b) to institute, develop and operate schemes for training operatives, craftsmen, technicians and technologists needed to sustain and improve industry;
- (c) to promote the training of apprentices;
- (d) to provide and co-ordinate the provision of skills training to disabled persons aged 15 and over for the purpose of improving their employment prospects and preparing them for open employment; and
- (e) to establish, operate and maintain technical colleges, technical institutes, industrial training centres and skills centres.

6. In recent years, the number of Hong Kong firms engaged in cross-border operations has increased and they employ a large workforce from Hong Kong. The Administration considers the ability of VTC to equip our workforce to cater for the demand of these firms crucial to maintaining the competitiveness and employment prospects of our workers. It also considers that it will be beneficial to young people if VTC makes arrangements for industrial attachment across the border for its students to acquire valuable working experience and to enhance their employment opportunities upon graduation (para. 3 of LegCo Brief).

7. According to the Administration, this Bill seeks to give power to VTC to engage in extra-territorial activities which are consistent with VTC's objects and functions (para. 7 of LegCo Brief). The relevant provisions in the Bill seek to provide as follows -

"6. (3) Subject to subsection (4), the Council may perform any of its functions under this section in Hong Kong or elsewhere either on its own or jointly with or as agent for other person or organization.

(4) The Council may not perform any of its functions outside Hong Kong using any money appropriated by the Legislative Council under section 12(a) unless the functions so

performed are for the training and education of Hong Kong persons."

The list of the functions and powers of VTC is provided in section 6 of VTCO (Appendix 1).

8. Section 12 of VTCO provides for the funds and property of VTC as follows -

"12. Funds and property of the Council

The funds and property of the Council shall consist of -

- (a) all moneys appropriated by the Legislative Council for the purposes of the Council;
- (b) all moneys lawfully received by the Council by way of grants, loans, funds, donations, fees, rent or interest;
- (c) all moneys derived from the sale of any property held by or on behalf of the Council; and
- (d) all property and assets lawfully acquired by the Council."

9. The effect of proposed section 6(3) and (4) seems to be that -

- (a) VTC *may* perform its functions outside Hong Kong, and
- (b) VTC *may not* perform any of its statutory functions outside Hong Kong for the education and training of people other than Hong Kong persons only if such performance is financed by the moneys appropriated by the Legislative Council.

It follows that VTC may utilize the capital and income accumulated under section 12(b), (c) and (d) of VTCO to finance the extra-territorial activities which may or may not be for the education and training of Hong Kong persons.

10. With regard to the precise effect of the above proposed provisions of the Bill, the Legal Service Division has written to the Administration to seek clarifications. The Administration has just given a reply proposing some changes to proposed section 6(4) of the Bill (available in English only) and we are now examining the reply (Appendix II to IV).

Other amendments

11. The Bill also seeks to make 2 other amendments. First, under section 17(2) of VTCO, after the end of each financial year, VTC shall cause to be prepared a statement of income and expenditure of VTC during that financial year and a balance sheet of VTC on the last day thereof, which statement and balance sheet shall be signed by the Chairman. Clause 5 of the Bill seeks to provide that any one of the Deputy Chairmen may sign the statement of income and expenditure and 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.

12. Secondly, the Bill seeks to replace the reference of "disabled person" in the English text of VTCO by "person with a disability". According to the explanation of the Administration, the term "disabled person" in the existing provisions of VTCO does not conform with international practice in the description of physically disabled people (para. 8 of LegCo Brief).

Public consultation

13. VTC has consulted all its Training Boards, which comprise stakeholders of relevant industry sectors, and they support the proposal for VTC to engage in extra-territorial activities (para. 14 of LegCo Brief).

Consultation with LegCo Panel

14. At the meeting on 20 November 2003, the LegCo Panel on Manpower was consulted on the Administration's proposal to empower VTC to engage in extra-territorial activities and to introduce 2 minor amendments to VTCO.

15. Members did not raise specific concerns about the policy aspects of the proposals. A member asked the Administration to provide information on the number of Hong Kong based firms which operated in the Mainland and the number of Hong Kong people employed there, the workers' length of stay in the Mainland, the number of trips made by the workers to Hong Kong, and whether the workers were on permanent or short-term contracts, to support the need for the proposed amendments to VTCO. The Administration informed the Panel that according to the research "*Made in Pearl River Delta - the Changing Face of Hong Kong Manufacturers*" (published in June 2003) conducted by the Federation of Hong Kong Industries, there were about 63,000 Hong Kong based firms engaging in manufacturing activities in the Mainland, with 53,000 Hong Kong based companies operating factories in Guangdong and about 83,000 Hong Kong employees working in Guangdong. According to government statistics, over 190,000 people were working in the Mainland.

Conclusion

16. In the course of examining the legal and drafting aspects of the Bill, the Legal Service Division has found that the Bill involves certain policy issues which have not been fully addressed, for example -

- (a) The proposed amendments of the Bill call into the question of whether the fundamental object of VTCO will be maintained.
- (b) If VTC is permitted under the Bill to utilize the capital and income accumulated under section 12(b), (c) and (d) of VTCO to finance the extra-territorial activities which may or may not be for the training and education of Hong Kong persons (as discussed in paragraphs 7 to 9 above), will there be any impact on the existing training programmes which are partly or wholly financed by such capital and income?
- (c) If the policy intention of the Bill is to prohibit VTC from using the moneys appropriated by the Legislative Council to finance extra-territorial activities, the exact allocation of resources of VTC such as manpower with respect to Hong Kong and extra-territorial activities is not addressed by provisions in the Bill.
- (d) If the moneys appropriated by the Legislative Council will not be permitted to be used to finance VTC's extra-territorial activities, the issue of whether the income and capital gains (e.g. from the sale of a capital asset acquired with moneys appropriated by the Legislative Council) derived from such appropriated moneys will be permitted to be used to finance VTC's extra-territorial activities is not explicitly addressed.

17. In view of the policy issues identified in paragraph 16 above, members may wish to consider setting a Bills Committee to scrutinize the Bill as was the case in the last term.

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第 II 部

職業訓練局

4. 職業訓練局的設立

(1) 現設立一個名為職業訓練局的訓練局，該訓練局是一個以該名稱成立的永久延續的法人團體，並可起訴與被起訴。

(2) 職訓局須備有一個法團印章，加蓋印章須由任何 2 名職訓局成員簽署認證。

5. 職訓局的宗旨

職訓局的宗旨是——

- (a) 就為確保有一個切合香港發展需要的全面工業教育及工業訓練制度而需採取的措施向行政長官提供意見；(由 2000 年第 56 號第 3 條修訂)
- (b) 訂立、發展和營辦計劃，以訓練維持和改善工業所需的操作工、技工、技術員及技師；
- (c) 促進學徒的訓練；(由 1991 年第 35 號第 4 條代替)
- (d) 向 15 歲及以上的殘疾人士提供技能訓練並就提供該等訓練加以統籌，以改善他們的就業機會和訓練他們應付公開就業；(由 1991 年第 35 號第 4 條增補)
- (e) 設立、營辦和維持科技學院、工業學院、工業訓練中心及技能訓練中心。(由 1991 年第 35 號第 4 條增補)

6. 職訓局的職能

(1) 職訓局須——

- (a) 審議行政長官向職訓局提出的任何有關工業教育、工業訓練或技能訓練的事宜，並就該等事宜向行政長官報告；(由 2000 年第 56 號第 3 條修訂)
- (b) 每年向行政長官報告一次，或按行政長官指示的次數向行政長官報告；(由 2000 年第 56 號第 3 條修訂)

PART II

VOCATIONAL TRAINING COUNCIL

4. Establishment of the Vocational Training Council

(1) There is hereby established a council, to be known as the Vocational Training Council, which shall in that name be a body corporate with perpetual succession and shall be capable of suing and being sued.

(2) The Council shall have a common seal, the affixing of which shall be authenticated by the signature of any 2 members of the Council.

5. Objects of the Council

The objects of the Council shall be—

- (a) to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the developing needs of Hong Kong; (Amended 56 of 2000 s. 3)
- (b) to institute, develop and operate schemes for training operatives, craftsmen, technicians and technologists needed to sustain and improve industry;
- (c) to promote the training of apprentices; (Replaced 35 of 1991 s. 4)
- (d) to provide and co-ordinate the provision of skills training to disabled persons aged 15 and over for the purpose of improving their employment prospects and preparing them for open employment; (Added 35 of 1991 s. 4)
- (e) to establish, operate and maintain technical colleges, technical institutes, industrial training centres and skills centres. (Added 35 of 1991 s. 4)

6. Functions of the Council

(1) The Council shall—

- (a) consider and report to the Chief Executive on any matter concerning technical education, industrial training or skills training referred to it by the Chief Executive; (Amended 56 of 2000 s. 3)
- (b) report to the Chief Executive annually or as often as he may direct; (Amended 56 of 2000 s. 3)

- (c) 審查科技學院、工業學院、工業訓練中心及技能訓練中心在財務上的需要，並就該等財務上的需要向行政長官提出建議；（由 2000 年第 56 號第 3 條修訂）
- (d) 營辦和維持政府指派予職訓局的技能訓練中心；
- (e) 經常檢討——
 - (i) 工業界對已受訓人力的需求；
 - (ii) 為應付工業界需求而可提供的已受訓人力；
 - (iii) 可供訓練工業界所需的人力的設施；
 - (iv) 僱主提供工業訓練及學徒訓練方面的事宜；及
 - (v) 僱主為受訓學員及學徒提供的工業訓練的足夠程度，以及促進和改善該等訓練所須採取的措施；
- (f) 審議和建議何種行業應由行政長官根據《學徒制度條例》(第 47 章) 第 45 條指明為指定行業；（由 2000 年第 56 號第 3 條修訂）
- (g) 審議訓練委員會及一般委員會提出的關於訓練課程的建議，並如認為適當，則須批准該等建議；及
- (h) 就技能訓練提供技術方面的輔助器材及職業評估。（由 1991 年第 35 號第 5 條增補）

(2) 職訓局可為更有效地執行其宗旨而作出一切所需或所附帶的事情，或作出一切有助於更有效地執行其宗旨的事情，並在不損害前述條文的一般性的原則下，尤可——

- (a) 就任何關於工業教育、工業訓練或技能訓練的事宜向政府及有利害關係的人諮詢意見；
- (b) 就有關工業教育、工業訓練或技能訓練的任何方面進行或委託他人進行研究；
- (c) 收取和審議關於發展工業教育、工業訓練及技能訓練的建議或提議；
- (d) 指明向接受工業訓練的人教授的技能及操作知識；
- (e) 為任何行業設計訓練課程、考試及測驗；
- (f) 就作為某些人接受工業教育或工業訓練的先決條件而對他們所須達到的最低教育程度作出建議；

- (c) examine and make recommendations to the Chief Executive on the financial needs of technical colleges, technical institutes, industrial training centres and skills centres; (*Amended 56 of 2000 s. 3*)
- (d) operate and maintain any skills centre assigned to it by the Government;
- (e) keep under review --
 - (i) the needs of industry for trained manpower;
 - (ii) the availability of trained manpower to meet the needs of industry;
 - (iii) the facilities available to train the manpower needed by industry;
 - (iv) the provision by employers of industrial training and apprenticeships; and
 - (v) the adequacy of industrial training provided by employers for trainees and apprentices and the measures to be taken to promote and improve such training;
- (f) consider and recommend which trades should be specified by the Chief Executive to be designated trades under section 45 of the Apprenticeship Ordinance (Cap. 47); (*Amended 56 of 2000 s. 3*)
- (g) consider and approve, if thought fit, recommendations from training boards and general committees for training courses; and
- (h) provide technical aids and vocational assessment in connection with skills training. (*Added 35 of 1991 s. 5*)

(2) The Council may do all things that are necessary for, or incidental or conducive to, the better carrying out of the objects of the Council and may in particular, but without prejudice to the generality of the foregoing—

- (a) consult with the Government and with any interested person on any matter pertaining to technical education, industrial training or skills training;
- (b) conduct or commission research into any aspect of technical education, industrial training or skills training;
- (c) receive and consider suggestions or proposals for the development of technical education, industrial training and skills training;
- (d) specify the skills and operations to be taught to persons undergoing industrial training;
- (e) devise training programmes, examinations and tests for any trade;
- (f) recommend the minimum standard of education to be attained by persons as a pre-requisite to their undergoing technical education or industrial training;

- (g) 傳布訓練材料及關於根據第(1)款經常檢討的事宜的資料；
- (h) 設立、營辦和維持科技學院、工業學院、工業訓練中心及技能訓練中心；
- (i) 提供或批准工業教育、工業訓練及技能訓練的訓練課程及其他設施；
- (j) 幫助申請接受工業訓練及技能訓練的人找尋適合的訓練設施；
- (k) 為任何個別行業訂立所須達致的技能水平，就任何行業舉行考試及測驗，並頒發修讀證明書及合格證明書；
- (l) 經政務司司長批准後，使用政府任何部門的人手、設施及服務；*(由 1997 年第 362 號法律公告修訂)*
- (m) 將職訓局的資金分配予任何人，以提供職訓局批准的訓練課程(該人根據任何其他條例負責提供的訓練課程或為應付他本身對已受訓人手的需索而提供的訓練課程除外)；
- (n) 僱用員工並給予他們酬金；
- (na) 向政府繳付款項，為數相當於政府依據《退休金(特別規定)(職業訓練局)條例》(第 387 章)第 4 條須就由政府轉至職訓局任職的人而支付的退休金款額；*(由 1991 年第 55 號第 5 條增補)*
- (o) 聘請技術及專業顧問，就職訓局的任何職能所引起或與職訓局的任何職能相關的事宜提供意見，並給予他們酬金；
- (p) 支付津貼予修讀職訓局所提供或批准的課程的人；
- (q) 支付津貼予參與提供職訓局所提供或批准的訓練課程的人；
- (r) 支付其認為適當的開支予並非公職人員的職訓局成員、職訓局委員會成員或訓練委員會或一般委員會的成員；
- (s) 取得、持有和承租為執行職訓局在本條例下的職能所需的任何財產，並在符合持有該等財產的條款及條件下處置該等財產；
- (t) 接受合法地給予並符合職訓局在本條例下的宗旨的資金及捐贈；

- (g) disseminate training materials and information on matters kept under review under subsection (1);
- (h) establish, operate and maintain technical colleges, technical institutes, industrial training centres and skills centres;
- (i) provide or approve training courses and other facilities for technical education, industrial training and skills training;
- (j) help candidates for industrial training and skills training to find suitable training facilities;
- (k) establish standards of skill to be achieved in any particular trade, conduct examinations and tests in respect of any trade and award certificates of attendance and competence;
- (l) with the approval of the Chief Secretary for Administration make use of personnel, facilities and services of any department of the Government; *(Amended L.N. 362 of 1997)*
- (m) allocate funds of the Council to any person for the purpose of providing any training course approved by the Council other than a training course which that person is responsible for providing under any other Ordinance or is providing in order to meet his own requirements for trained personnel;
- (n) employ staff and remunerate them;
- (na) pay to the Government amounts representing the cost of pension benefits payable by the Government pursuant to section 4 of the Pensions (Special Provisions) (Vocational Training Council) Ordinance (Cap. 387) in respect of persons transferred from service under the Government to service under the Council; *(Added 55 of 1991 s. 5)*
- (o) engage technical and professional advisers to advise on any matter arising out of or connected with any of the functions of the Council, and remunerate them;
- (p) pay allowances to persons attending courses provided or approved by the Council;
- (q) pay allowances to persons partaking in the provision of training courses provided or approved by the Council;
- (r) pay such expenses as it thinks fit to any member, other than a public officer, of the Council, of a council committee or of a training board or general committee;
- (s) acquire, hold and lease any property required for the discharge of its functions under this Ordinance and, subject to the terms and condition upon which such property is held, dispose of it;
- (t) receive funds and donations lawfully given and consistent with its objects under this Ordinance;

- (u) 經財政司司長批准後，以所需的保證借入款項或以其他方式籌集款項，並為該目的而將職訓局全部或任何部分的財產作押記；(由 1997 年第 362 號法律公告修訂)
- (v) 就職訓局提供的服務或使用職訓局提供的設施收取費用；及
- (w) 為貫徹其宗旨或行使其職能而訂立任何合約。
(由 1991 年第 35 號第 5 條修訂)

7. 轉授職能

(1) 職訓局可一般地或在任何個別情況下，將執行或行使其在本條例下的任何職能轉授予任何訓練委員會或一般委員會、職訓局委員會或任何公職人員，由該等委員會或公職人員代其執行或行使。

(2) 如職訓局在本條例下的任何職能由第 (1) 款所提述的訓練委員會、一般委員會、職訓局委員會或公職人員執行或行使，則除非相反證明成立，否則該職能的執行或行使須當作已妥為轉授予該訓練委員會、一般委員會、職訓局委員會或公職人員(視屬何情況而定)。

第 III 部

成員、幹事、訓練委員會、一般委員會及 職訓局委員會

8. 職訓局的成員

- (1) 職訓局由以下成員組成——
- (a) 由行政長官委任的並非公職人員的人不超過 18 名；
- (b) 由行政長官委任的公職人員不超過 4 名；
- (c) 執行幹事。(由 1991 年第 35 號第 6 條增補)
- (2) 行政長官須從根據第 (1)(a) 款獲委任的成員中委出一名職訓局主席。
- (3) 行政長官須從根據第 (1)(a) 及 (b) 款獲委任的成員中委出他認為適當數目的職訓局副主席。
- (4) 每名本身是公職人員的職訓局成員，任期由行政長官酌情決定。

- (u) with the approval of the Financial Secretary borrow or otherwise raise money on such security as may be necessary, and, for that purpose, charge all or any part of the property of the Council;
- (v) charge fees for any services or the use of any facility provided by the Council; and
- (w) enter into any contract in furtherance of its objects or the exercise of its functions.

(Amended 35 of 1991 s. 5)

7. Delegation

(1) The Council may, either generally or in any particular case, delegate to any training board or general committee, any council committee or any public officer the performance or exercise on its behalf of any of its functions under this Ordinance.

(2) Where any function of the Council under this Ordinance is performed or exercised by a board, committee or public officer referred to in subsection (1), the performance or exercise shall, unless the contrary is proved, be deemed to have been duly delegated to that board, committee or public officer as the case may be.

PART III

MEMBERSHIP, EXECUTIVE, BOARDS AND COMMITTEES

8. Membership of the Council

- (1) The Council shall consist of the following members—
- (a) such number of persons other than public officers, not exceeding 18, as the Chief Executive may appoint;
- (b) such number of public officers, not exceeding 4, as the Chief Executive may appoint;
- (c) the Executive Director. (Added 35 of 1991 s. 6)
- (2) The Chief Executive shall appoint a Chairman of the Council from those members appointed under subsection (1)(a).
- (3) The Chief Executive shall appoint such number of Deputy Chairmen of the Council as he may think fit from those members appointed under subsection (1)(a) and (b).
- (4) Every member of the Council who is a public officer shall hold office at the discretion of the Chief Executive.



中華人民共和國香港特別行政區政府總部教育統籌局
Education and Manpower Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

本局檔號 Our Ref. :
來函編號 Your Ref. :

電話 Telephone : 2961 5615
傳真 Fax Line: 2801 6314

11 October 2004

Ms Kitty Cheng
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

[Fax: 2877 5029]

Dear Ms Cheng,

Vocational Training Council (Amendment) Bill 2004

I refer to our telephone conversation on 9 October 2004 on the captioned subject.

We have revised clause 4 of the Bill taking into account your concerns over the use of public money by the Vocational Training Council when conducting extra-territorial activities. The revised draft of clause 4 of the Bill (available in English only) is enclosed for your reference.

Yours sincerely,

(Gary Au)

for Secretary for Education and Manpower

c.c. Department of Justice (Attention: Ms Phyllis Poon 25213275)

香港灣仔皇后大道東 213 號胡忠大廈 2329 室 Room 2329, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong

~~(4) The Council may not perform any of its functions outside Hong Kong using any money appropriated by the Legislative Council under section 12(a) unless the functions so performed are for the training and education of Hong Kong persons.~~

(4) If the Council 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 the Council shall be used to subsidize such function.

(5) For the purposes of subsection (4) and this subsection -
 "Hong Kong person" (香港人) means 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;

"limit of stay" (逗留期限), in relation to a person, means a condition of stay limiting the period during which the person may remain in Hong Kong."

5. Accounts

Section 17 is amended -

- (a) in subsection (3), by repealing everything after "thereof" and substituting a full stop;
- (b) by adding -

"(4) The statement and balance sheet required by subsection (3) shall be signed by the

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Mr Gary AU
AS (Manpower Planning & Training) 1
Education and Manpower Bureau
Rm 923, West Wing
Central Government Offices
Central, Hong Kong

By Fax (2801 6314) and By Post

13 January 2004

Dear Mr AU,

Vocational Training Council (Amendment) Bill 2003

Further to my letter to you on 7 January 2004 and our subsequent telephone conversation, I would be pleased if you could provide information on the following matters -

1. Objects and Functions of the Vocational Training Council ("VTC")

"5. Objects of the Council

- (a) to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the developing needs of Hong Kong;
- (b) to institute, develop and operate schemes for training operatives, craftsmen, technicians and technologists needed to sustain and improve industry;
- (c) to promote the training of apprentices;
- (d) to provide and co-ordinate the provision of skills training to disabled persons aged 15 and over for the purpose of improving their employment prospects and preparing them for open employment;
- (e) to establish, operate and maintain technical colleges, technical institutes, industrial training centres and skills centres."

Proposed section 6(4) of the Bill seeks to permit VTC to perform any of its

functions under section 6 of the Vocational Training Ordinance (Cap. 1130) ("VTCO") in Hong Kong or elsewhere. The functions provided in section 6 of VTCO should presumably be consistent with the objects of VTC as provided under section 5 of VTCO.

Section 5(a) expressly states that the object of VTC shall be to advise the Chief Executive on the measures required to ensure a comprehensive system of technical education and industrial training suited to the developing needs of *Hong Kong*. The territorial limit of Hong Kong is not expressly stated in the rest of the section. Does the Administration consider subsections (b), (c), (d) and (e) of section 5 conjunctive or disjunctive to subsection (a) of section 5? In other words, are subsections (b), (c), (d) and (e) bound by the territorial limit imposed by section 5(a)?

2. Proposed section 6(4)

"(4) The Council *may not* perform any of its functions outside Hong Kong using any money appropriated by the Legislative Council under section 12(a) unless the functions so performed are for the training and education of Hong Kong persons."

As you may be aware, "may" is a permissive or enabling expression. When "may" is used in a legislative provision, there is a prima facie presumption that its meaning is permissive, that is, it conveys that the authority which has power to do such an act has an option either to do it or not to do it. In this regard, I would like to refer to the following observation made by G. C. Thornton, Q.C. in his book *Legislative Drafting* (4th ed.) -

"Although 'may' has been construed many times so as to impose an obligation, the drafter should never presume such a construction. 'May' should never be used if 'must' or 'shall' is intended." (p. 218)

A question may arise as to whether VTC, under proposed section 6(4), is absolutely prohibited from performing its functions outside Hong Kong if money appropriated by the Legislative Council is involved. Please clarify the effect of proposed section 6(4).

I would be grateful for your reply in bilingual form at your earliest convenience.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. Legal Adviser

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By Fax (2801 6314) and By Post

7 January

Dear Mr AU,

Vocational Training Council (Amendment) Bill 2003

I am looking at the drafting and legal aspects of the Vocational Training Council (Amendment) Bill 2003 with a view to advising the House Committee and would be pleased if you could clarify the following:-

1. Proposed section 6(4) (clause 4)

"(4) The Council may not perform any of its functions outside Hong Kong using any money appropriated by the Legislative Council under section 12(a) unless the functions so performed are for the training and education of Hong Kong persons.

(4) 除非職訓局在香港以外地方運用第 12(a)條所指的立法會撥款執行其職能是為香港人的訓練及教育而執行的，否則職訓局不得如此執行其職能。"

With regard to the English text of the proposed section 6(4), does the Administration seek to prohibit the Council from performing its statutory functions for the benefit of the people other than Hong Kong persons outside Hong Kong only if such performance is financed by the moneys appropriated by the Legislative Council?

If this is the intended effect of the proposed section 6(4), it follows that the Council is free to perform any of its statutory functions outside Hong Kong for any people, whether or not they are Hong Kong persons, insofar as such performance is not financed by the moneys appropriated by the Legislative Council. In this regard, it is noted that the moneys appropriated by the Legislative Council form only part of the funds and property of the Council since section 12 of the Vocational Training Council Ordinance (Cap. 1130) provides that:-

"12. The funds and property of the Council shall consist of-

- (a) all moneys appropriated by the Legislative Council for the purposes of the Council;
- (b) all moneys lawfully received by the Council by way of grants, loans, funds, donations, fees, rent or interest;
- (c) all moneys derived from the sale of any property held by or on behalf of the Council; and
- (d) all property and assets lawfully acquired by the Council."

Please advise the object(s) which the proposed section 6(4) intends to achieve.

2. Chinese text

In view of the above query, I wonder if you could review the Chinese text of the proposed section 6(4) (clause 4) of the Bill accordingly.

Please let me have a reply in bilingual form on or before 13 January 2004.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

c.c. Legal Adviser