

14 December 2007

By Fax 2877 5029

Mr Arthur Cheung
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Legco Legal Service Division
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Dear Mr Cheung,

**The English Schools Foundation (Amendment) Bill 2007
Points Raised for Clause-by-Clause Examination**

Thank you for your letter of 11 December 2007. I attach the response I have agreed with our lawyer.

Yours sincerely,



Heather Du Quesnay
Chief Executive

Att

Points raised by ALA, LegCo for clause-by clause examination

ESF response

(a) Clause 4

- (i) *The definition of "Permanent Secretary" may need to be updated;*
- (ii) *The same with the reference in the re-numbered section 19 of the principal ordinance;*

(i) Agreed

(ii) For consistency, renumbered section 19 should be amended by repealing "for Education and Manpower".

(b) Clause 6

In section 3 of the principal ordinance, would consideration be given to adding the Chinese name of the Foundation in the English text and vice versa in the Chinese text?

The Law Draftsman will be consulted as to standard practice.

(c) Proposed section 6, clause 8

- (i) *In subsection (1)(c), if a Foundation school is established outside Hong Kong, how would this provision be implemented?*
- (ii) *Whilst subsection (1)(e) refers to schools of the Foundation, which by definition includes nurseries up to secondary schools, subsection (1)(c) and (f) refer to primary and secondary schools or their teachers only.*
- (iii) *In subsection (4), at least one member of the Board shall be an alumnus of a Foundation school. How could this be ensured in the context of the section?*
- (iv) *Should there be any provision governing resignation of a Board member and the filling of vacancy?*

(i) Subsection (1)(c) of proposed section 6 will have no application to schools established outside Hong Kong – see proposed section 2(3) (clause 4(3)).

(ii) For policy reasons, various provisions are drafted to refer to primary and

secondary schools only, in which case schools providing nursery or kindergarten education exclusively are not caught (see also proposed section 2(4) at clause 4(3)); otherwise the reference is to schools of all levels.

- (iii) Persons standing for election will be asked to identify whether they are an alumnus. The Nominating Committee will be asked to ensure that one of the independent members is an alumnus.
- (iv) Resignation etc. of Board members is to be dealt with by Regulations – see proposed section 24(1)(b) and section 3 of the draft Regulation attached to the LegCo Brief.

(d) Proposed section 8, clause 8

- (i) Is it necessary to provide for the term of office of members of the Nominating Committee? Without a term of office, how would the rotation referred to in subsection (3) be implemented?*
- (ii) Would it be possible for the Nominating Committee to select its own member to be a Board member?*
- (iii) Is it necessary to provide for resignation of members and filling of vacancies?*
- (i) Term of office etc. of Nominating Committee members is to be dealt with by Regulations – see proposed section 24(1)(b) and section 7 of the draft Regulation attached to the LegCo Brief.
- (ii) A member of the Nominating Committee will not be eligible for membership of the Board – see proposed section 6(3).
- (iii) Resignation etc. of Nominating Committee members is to be dealt with by Regulations – see proposed section 24(1)(b).

(e) Proposed section 12(1), clause 8

There does not appear to be any provision relating to Foundation nurseries and kindergartens apart from, presumably, paragraph (a);

For policy reasons, various provisions are drafted to refer to primary and secondary schools only, in which case schools providing nursery or kindergarten education exclusively are not caught (see also proposed section 2(4) at clause 4(3)); otherwise the reference is to schools of all levels.

(f) **Proposed section 13, clause 8**

Does the reference to "schools of the Foundation that provides primary or secondary education" in subsection (1) include any provision of nursery or kindergarten so that the School Councils also cover pre-primary institutions?

For policy reasons, various provisions are drafted to refer to primary and secondary schools only, in which case schools providing nursery or kindergarten education exclusively are not caught (see also proposed section 2(4) at clause 4(3)); otherwise the reference is to schools of all levels.

(g) **Proposed section 15, clause 8**

It is not clear how the distinction between "members of staff of the school" in subsection (2)(d) and "staff who will report directly to the Principal" in subsection (5) is drawn.

The class of persons "staff who will report directly to the Principal" in subsection (5) is a subset of the class of persons "members of staff of the school" in subsection (2)(d). They will be identified by reference to their terms of service.