

LEGISLATIVE COUNCIL BRIEF

CUSTOMS AND EXCISE SERVICE CHILDREN'S EDUCATION TRUST FUND BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 8 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Customs and Excise Service Children's Education Trust Fund Bill 1999, at the Annex, should be introduced into the Legislative Council, to establish a trust fund to provide financial assistance for post-primary education for children of customs officers and for education and training for handicapped children of such officers.

BACKGROUND AND ARGUMENT

2. At present some disciplined services, such as the Police and Correctional Services, have established statutory trust funds to accept and apply donations providing financial assistance for the education of children of these services. There is however no similar mechanism for the Customs and Excise Service.

3. The Board of Management of the Chinese Permanent Cemeteries donated a sum of HK\$300,000 to C&ED in October 1997 to provide financial assistance for the education of children of customs officers. The money has been deposited in a local bank since, pending the establishment of a mechanism to govern the use of the donation and future similar donations.

4. At present, children of customs officers enjoy the same education benefits as other civil servants of similar seniority and years of service, such as allowance for school fees. Additional financial assistance for higher education, mainly in the form of bursaries and book grants, and for children with special needs (e.g. those who are handicapped), will therefore be welcomed by these officers and will be good for maintaining their morale as

disciplined staff.

5. We consider that a statutory trust fund should be set up for the purpose. This would allow the objectives and application of the Fund to be spelled out clearly and the operations of the fund be strictly regulated. In addition, in line with the arrangement for other disciplined service trust funds, the proposed trustee is the Commissioner of Customs and Excise, who will be carrying out his responsibility as the trustee in his official capacity. It would therefore be appropriate for the proposed fund to be a statutory one.

THE BILL

6. The main provisions of the Bill are –

- (a) **Clauses 3 and 4** establish the fund and provide for the incorporation of the Commissioner of Customs and Excise as the trustee of the fund.
- (b) **Clause 5** sets out the objects and application of the fund.
- (c) **Clause 6** establishes the Customs and Excise Service Children's Education Trust Committee (the Committee) and sets out its constitution.
- (d) **Clauses 7 and 8** make standing orders of the Committee established by Clause 6 and specify that officers of the Committee shall be honorary.
- (e) **Clause 9** empowers the trustee to invest fund moneys in investments authorized under the Trustee Ordinance or otherwise recommended by the Investment Advisory Board established by Clause 10.
- (f) **Clause 10** establishes an Investment Advisory Board and sets out its functions and constitution.
- (g) **Clause 11** requires the trustee to keep proper accounts for the fund and to table an audited statement of accounts to be laid before the Legislative Council annually.

- (h) **Clause 12** makes provision for the cost of administration of the fund.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be –

Publication in the Gazette	17 June 1999
First reading and commencement of Second reading debate	23 June 1999
Resumption of Second reading debate, committee stage and third reading	To be notified

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the proposed Bill is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the proposed Bill has no human rights implications.

BINDING EFFECT

10. The Bill does not bind the State by express provision.

FINANCIAL AND STAFFING IMPLICATIONS

11. Administration of the proposed statutory fund by C&ED will generate some workload for the department, which however should not be significant and will be absorbed within C&ED's existing resources. There are no financial and staffing implications for Government.

ECONOMIC IMPLICATIONS

12. There will be no economic implications.

PUBLICITY

13. A press release will be issued on 16 June 1999. A spokesman will be available to handle media enquiries.

ENQUIRIES

14. Enquiries may be directed to Miss Estrella Cheung, Assistant Secretary for Trade and Industry, on 2918 7483 (Fax: 2869 4420).

Trade and Industry Bureau

June 1999

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**CUSTOMS AND EXCISE SERVICE CHILDREN'S EDUCATION
TRUST FUND BILL**

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A BILL

To

Provide for the establishment and administration of the Customs and Excise Service Children's Education Trust Fund and for connected matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Customs and Excise Service Children's Education Trust Fund Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Trade and Industry by notice published in the Gazette.

2. Interpretation

In this Ordinance, unless the context otherwise requires -

"commencement date" (生效日期) means the date of commencement of this Ordinance;

"Commissioner" (海關關長) means the Commissioner of Customs and Excise;

"committee" (委員會) means the committee established by section 6;

"customs officer" (關員級人員) has the meaning assigned to it by section 2 of the Customs and Excise Service Ordinance (Cap. 342);

"fund" (基金) means the fund established by section 3;

"higher education" (高等教育) means post-primary education or any education of a professional, technological, academic or other nature not below the standard of post-primary education;

"trustee" (受託人) means the Commissioner as trustee of the fund.

3. Establishment of the fund

(1) There is hereby established a fund to be known as the Customs and Excise Service Children's Education Trust Fund.

(2) The trustee shall hold the fund upon trust and subject to the provisions of this Ordinance.

(3) The fund shall consist of -

- (a) all moneys donated to the Commissioner prior to the commencement date in anticipation of the establishment of the fund;
- (b) such further moneys and assets as may, from time to time on or after the commencement date, be -
 - (i) donated, subscribed or bequeathed to, and accepted by, the trustee for the purposes of the fund; or
 - (ii) otherwise acquired by the trustee for the purposes of the fund; and
- (c) any interest and income derived from the moneys and assets of the fund.

4. Incorporation of Commissioner as trustee

(1) For the purposes of this Ordinance, the Commissioner shall be the trustee of the fund and shall be a corporation sole (in this section referred to as "the corporation") and shall have the name of

"The Trustee of the Customs and Excise Service Children's Education Trust Fund", and in that name shall have perpetual succession and may sue and be sued in any court.

(2) The corporation shall have a common seal and the affixing of the seal shall be authenticated by the signature of the trustee.

(3) Any instrument purporting to be an instrument duly executed under the common seal of the corporation shall be admissible in evidence and shall, unless the contrary is proved, be deemed to be an instrument so executed.

5. Objects of the trust and application of the fund

The trustee shall apply the fund in such manner and to such extent as the committee may, in its absolute discretion, direct for the following objects -

- (a) to provide assistance in, and facilities for, the higher education of the children of customs officers;
- (b) to provide assistance in, and facilities for, the education and training of handicapped children of customs officers;
- (c) such other objects ancillary or incidental to the objects referred to in paragraphs (a) and (b) as the committee may consider appropriate; and
- (d) to provide any such children of opportunities for the furtherance of such education and training.

6. Establishment of committee

(1) The fund shall be managed by a committee known as the Customs and Excise Service Children's Education, Trust Fund Committee.

- (2) The committee shall consist of -
 - (a) a chairman, appointed by the Financial Secretary;
 - (b) the Commissioner, or a person appointed by the Commissioner to represent him;
 - (c) the officer in charge of the Service Welfare Division of the Customs and Excise Service;
 - (d) a representative of the customs officers, appointed by the Financial Secretary; and
 - (e) not more than 2 other members appointed by the Financial Secretary.
- (3) A member appointed by the Financial Secretary under this section -
 - (a) shall hold office for such period as is specified in the member's letter of appointment;
 - (b) may be reappointed or removed by the Financial Secretary; and
 - (c) may resign by giving notice in writing to the Financial Secretary.
- (4) Unless otherwise provided by standing orders made under section 7, the quorum necessary for the transaction of business by the committee shall be the Chairman and 2 members.

7. Standing orders

- (1) The committee may make standing orders -
 - (a) governing its procedure in the transaction of business;
 - (b) for the maintenance of good order at its meetings; and

(c) generally, for matters relating to the administration and management of the fund and the discharge of the duties of the committee.

(2) A copy of every standing order shall be furnished to the Chief Secretary for Administration and every such order shall be subject to amendment by the Chief Executive.

(3) All questions arising at any meeting of the committee shall be decided by a majority of votes of members present, and, in case of an equality of votes, the chairman shall have a casting vote in addition to his original vote.

(4) No standing order made under this section shall be inconsistent with any of the provisions of this Ordinance.

8. Appointment of officers

The committee may appoint an honorary secretary, an honorary treasurer and such other honorary officers as it may deem necessary and it may fix the terms and conditions of their appointments.

9. Investment of moneys of the fund

Subject to the prior approval of the committee, the trustee may invest any money of the fund in any investment -

- (a) authorized under the Trustee Ordinance (Cap. 29); or
- (b) otherwise recommended by the Investment Advisory Board appointed under section 10.

10. Investment Advisory Board

(1) For the purposes of making recommendations to the trustee on the investment of fund moneys in investments other than those

authorized under the Trustee Ordinance (Cap. 29), there shall be established an Investment Advisory Board, which shall consist of at least 3 but not more than 5 persons appointed by the Financial Secretary.

(2) A member appointed under this section -

- (a) shall hold office for such period as is specified in the member's letter of appointment;
- (b) may be reappointed or removed by the Financial Secretary; and
- (c) may resign by giving notice in writing to the Financial Secretary.

(3) The Financial Secretary shall appoint a chairman from among the members of the Investment Advisory Board.

(4) The procedure for convening meetings of the Investment Advisory Board and for transacting business at those meetings is, subject to this section, to be as determined by the Investment Advisory Board.

11. Accounts

(1) The trustee shall cause proper accounts and records to be kept of all financial transactions of the fund and shall cause to be prepared, for each financial year, a statement of the accounts of the fund.

(2) The statement of accounts shall include an income and expenditure account for the financial year to which it relates and a balance sheet made up to the last day of that financial year.

(3) The statement of accounts shall be signed by the trustee and the chairman of the committee within 3 months after the end of the financial year to which it relates.

(4) The accounts of the fund and the signed statement of accounts shall be audited by the Director of Audit who shall certify the statement subject to such report, if any, as he may think fit.

(5) The trustee shall within 3 months after his receipt of the audited statement of accounts of a particular financial year from the Director of Audit, or such longer period as the Financial Secretary may allow, cause to be laid on the table of the Legislative Council, copies of the following documents in respect of that financial year -

- (a) the trustee's report on the administration of the fund;
- (b) the audited statement of accounts;
- (c) the Director of Audit's report, if any; and
- (d) any other report as the trustee may think fit to lodge.

(6) In this section, "financial year" (財政年度) means -

- (a) the period beginning with the commencement date and ending with 31 March next following; and
- (b) the period of 12 months ending 31 March in each subsequent year.

12. Cost of administration of the fund

The cost of the administration of the fund shall be a charge on the general revenue.

Explanatory Memorandum

This Bill seeks to establish a trust fund to be known as the Customs and Excise Service Children's Education Trust Fund ("the fund"). The objects of the trust are to provide financial assistance for post-primary education for children of customs officers and for education and training for handicapped children of such officers.

2. The fund is established by Clause 3 which sets out of what the fund is to consist.
3. Clause 4 provides for the incorporation of the Commissioner of Customs and Excise as the trustee of the fund and Clause 5 sets out the objects of the trust.
4. Clause 6 establishes a committee to be known as the Customs and Excise Service Children's Education Trust Fund Committee and sets out its constitution. Clause 7 makes provision for its procedure. Clause 8 provides that the officers of the Committee shall be honorary.
5. Clause 9 empowers the trustee to invest fund moneys in investments authorized under the Trustee Ordinance (Cap. 29) or otherwise recommended by the Investment Advisory Board established by clause 10.
6. Clause 10 establishes the Investment Advisory Board and sets out its function and constitution.
7. Clause 11 sets out the duties of the trustee to keep proper accounts and records of all transactions of the fund and to prepare an annual statement of such accounts. An audited statement of accounts is required to be laid before the Legislative Council every year.
8. Clause 12 makes provision for the cost of administration of the fund.