

立法會

Legislative Council

LC Paper No. LS276/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 24 September 1999**

**Legal Service Division Further Report on
Customs and Excise Service
Children's Education Trust Fund Bill**

At the House Committee meeting on 25 June 1999, it was agreed that a decision on the Bill be deferred pending a further report from the Legal Service Division.

2. Clarification has now been sought from the Administration on the drafting points raised in our letter of 17 June 1999 (copy attached).

3. In the Administration's response dated 8 July 1999, it was agreed that certain amendments would be proposed in the Committee Stage. These are no more than minor improvements to the drafting of the Bill. A copy of the response together with the proposed amendments is enclosed for reference.

4. On a Member's query as to why a trust fund had not been established for the Customs and Excise Service until now, the Administration explained that the fund had been proposed after the department had received a donation in October 1997 (please also refer to paragraph 3 of the LegCo brief).

5. Subject to the proposed amendments, the Bill is in order and Second Reading debate may be resumed.

Prepared by

CHEUNG Ping-Kam, Arthur
Assistant Legal Adviser
Legislative Council Secretariat
15 September 1999

Encl

TIB 03/01/3

LS/B/94/98-99

2869 9283

2877 5029

By Fax (2869 7483) & By Post

17 June 1999

Secretary for Trade and Industry Bureau
Trade and Industry Bureau
(Attn: Miss Estrella CHEUNG
AS (TI) D2)
29/F, One Pacific Place
88 Queensway
Hong Kong

Dear Sir,

**Customs and Excise Service Children's
Education Trust Fund Bill 1999**

My respective telephone conversations with your Miss CHEUNG and Ms Vicki LEE of counsel earlier today refer.

The drafting points that have been raised are summarised below for your consideration -

- (a) whether the names of the fund (clause 3(1)), the trustee (clause 4(1)) and the trust fund committee (clause 6(1)) should be provided bilingually in each of the language texts;
- (b) what is meant by "facilities" in clause 5(a) and whether "方便"

is the most appropriate Chinese rendition;

- (c) in clause 5(d), whether “provide ... of” is appropriately worded and whether there is any need to refer to the “furtherance of such education and training” in view of the very wide scope of the education and training already made possible by clause 5(a) and (b);
- (d) whether the “chairman” of the trust fund committee in clauses 6(2) and (4) and 7(3) should be spelt consistently with or not with a capital “C”;
- (e) whether clause 9(a) and (b), which seem to be mutually exclusive of each other by virtue of the expression “otherwise”, in fact overlap with each other considering the types of investments that may be regarded as authorised under the Trustee Ordinance; and
- (f) whether there is anything in clause 10(1) to (3) to which subclause (4) may be made subject.

For the clarification of paragraph 10 of the LegCo Brief, could the Administration confirm that both the intention and the effect of the Bill are that it does not bind the State.

Yours faithfully,

(Arthur CHEUNG)
Assistant Legal Adviser

c.c. Ms Vicki LEE

Law Drafting Division
Department of Justice

香港特別行政區政府工商局的信頭

Our ref. : TIB 03/01/3
Your ref. : LS/B/94/98-99

Tel. no.: 2918 7483
Fax no.: 2869 4420

8 July 1999

Mr Arthur Cheung
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Mr Cheung,

**Customs and Excise Service Children's
Education Trust Fund Bill 1999**

Thank you for your letter of 17 June 1999. We have, in consultation with the drafting counsel of the Bill, the following response to the drafting points raised in your letter.

Question (a)

We agree that it would be an improvement if the names of the fund, the trustee and the trust fund committee are set out in both English and Chinese in both the English and Chinese texts. We will therefore prepare the necessary amendments to the relevant clauses of the Bill.

Question (b)

The word "facilities" in clause 5(a) of the Bill means "ease, absence of difficulty" and "an opportunity, the equipment, or the resources for doing something." 方便" is therefore considered as the appropriate Chinese rendition in this context. You may wish to note that a number of provisions in other ordinances, such as section 5 of the Correctional Services Children's Education Trust Ordinance (Cap. 1131), rule 23 of Judicial Trustee Rules (Cap. 298) and rules 52, 95 and 208 of the Prison Rules (Cap. 234A), have also adopted the same rendition. In addition, this rendition was endorsed by

the Bilingual Laws Advisory Committee on 29.5.93 in the context of section 84(3) of the Public Health and Municipal Services Ordinance (Cap. 132).

Question (c)

We agree with you that clause 5(d) of the Bill should be deleted, since clause 5(a) and (b) should have covered the “furtherance of such education and training”, and that clause 5(d) may not be necessary. We propose to delete clause 5(d) of the Bill.

Question (d)

To ensure consistency, we propose to replace “Chairman” in clause 6(4) by “chairman”.

Question (e)

The power to invest in investments authorized under the Trustee Ordinance (Cap. 29) is to be exercised by the trustee upon the approval of the trust fund committee, while the Investment Advisory Board may recommend investments in other investments. If an investment is authorized, whether by virtue of section 4(1)(a) or (b) of Cap. 29, it falls under clause 9(a) of the Bill, and there is no need to invoke clause 9(b). On the other hand, if an investment, not being those authorized under section 4(1)(a) of Cap. 29, is recommended by the Board and approved by the trust fund committee, the trustee can make such investment and need not apply to the court under section 4(1)(b) of Cap. 29. There are existing legislative provisions which confer similar power on the trustee of a fund, e.g. section 32F of the Travel Agents Ordinance (Cap. 218) and section 9 of Cap. 1131.

We are therefore of the view that sub-clauses 9(a) and (b) are mutually exclusive and the current draft reflects this position. As such, no amendment is proposed.

Question (f)

Some procedures concerning the Investment Advisory Board have been provided in clause 10, such as the mechanism for members to resign from the Board (sub-clause 10(2)(c)), and the appointment of the chairman to the Board (sub-clause 10(3)). The expression “subject to this section” in sub-clause 10(4) intends to put beyond doubt that any procedures determined by the Board shall not contradict or be inconsistent with what has been provided.

Binding effect

The Bill is not intended to bind the State. The effect of the Bill, as it is currently drafted, is that it does not bind the State by necessary implications.

You further enquired in our recent teleconversation why the Customs and Excise Service Children's Education Trust Fund was proposed to be established well after similar funds of other disciplined services had been set up. In fact, the establishment of an education trust fund for children of Customs officers was proposed after the department received a donation for this purpose. As you are aware, the donation was only received in October 1997.

Subject to any further views that you may have, we will start preparing the necessary Committee Stage Amendments to take into account our comments on questions (a), (c) and (d). Should you need further clarification, please let me know.

Yours sincerely,

(Miss Estrella Cheung)
for Secretary for Trade and Industry

c.c. Ms Vicki Lee
Government Council (Law Drafting Division)
Department of Justice

Mr Simon Wong
Senior Superintendent (Management Services)
Customs and Excise Department

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

COMMITTEE STAGE

**Amendments to be moved by the Secretary
for Trade and Industry**

Clause

Amendment Proposed

- 3(1) By adding “（香港海關人員子女教育信託基金）” after “Fund”.
- 4(1) By adding “（香港海關人員子女教育信託基金受託人）” after ““The Trustee of the Customs and Excise Service Children’s Education Trust Fund””.
- 5
- (a) In paragraph (b), by adding “and” after the semicolon.
 - (b) In paragraph (c), by deleting”; and” and substituting a full stop.
 - (c) By deleting paragraph (d).
- 6
- (a) In subclause (1), by adding “（香港海關人員子女教育信託基金委員會）” after “Committee”.
 - (b) In subclause (4), by deleting “Chairman” and substituting “chairman”.