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22 November 2002

Ms. Bernice Wong
Assistant Legal Advisor
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Ms. Wong

Education Reorganization (Miscellaneous Amendments) Bill 2002

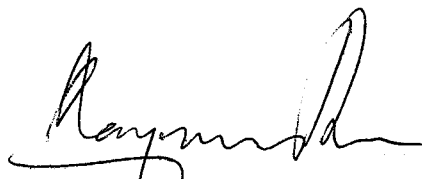
Thank you for your letter of 21 November 2002 with regard to the above Bill. We have consulted the Civil Advisory Division of the Department of Justice and the Law Draftsman's office. Our response is set out below.

I would like to clarify that Clauses 42 and 43 of the Bill are to preserve the rights and liabilities of the Director of Education (DE) and the Education Department (ED) by vesting them in the Permanent Secretary for Education and Manpower (PSEM) and Education and Manpower Bureau (EMB) respectively. The provisions of Clause 43 are to enable PSEM and EMB to continue the actions that may be taken by or against DE and ED in relation to those property and rights prior to the legislative amendments. Clause 43 does not confer any additional rights on PSEM and EMB which DE and ED do not have under the current legislation.

Clause 43(1) states that the provisions in that section apply to the extent that they are appropriate in the circumstances and consistent with the Ordinance. Clause 43(5) makes it clear that PSEM and EMB may sue on, recover or enforce the right and property vested in them, and Clause 43(6) puts it beyond doubt that if the property or right to be enforced is a chose in action, it is not necessary for PSEM or EMB to give a notice of transfer to the person bound by the chose in action. Neither Clause 43(5) nor (6) provides that PSEM and EMB may institute legal proceedings falling within the scope of the Crown Proceedings Ordinance in their own names.

PSEM and EMB are part of the Government and any civil proceedings by or against them would be civil proceedings by or against the Government and Section 13 of the Crown Proceedings Ordinance can apply automatically (if such civil proceedings fall within the scope of the Crown Proceedings Ordinance). Clause 43(5) and (6) of the Bill do not require such actions to be brought by or against PSEM and EMB in their own names and are therefore not inconsistent with Section 13 of the Crown Proceedings Ordinance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Raymond Poon', with a stylized flourish at the end.

(Raymond Poon)
for Secretary for Education and Manpower

c.c. D of J (Attn.: Ms Grace Leung and Ms Vivian Fung)