

EMBCR 6/2/3231/90 Pt. 3
LS/B/4/02-03
2869 9204
2877 5029

Secretary for Education and Manpower
Education and Manpower Bureau
9/F Central Government Offices
West Wing, Ice House Street
Central
Hong Kong

11 December 2002

BY FAX

Fax No. : 2147 9448
Total No. of Pages : 2

(Attention : Mr Raymond Poon,
Chief Executive Officer (9))

Dear Mr Poon,

Education Reorganization (Miscellaneous Amendments) Bill 2002

I refer to your letter of 10 December 2002.

I do not dispute the explanation in the Administration's letter of 22 November 2002 that clause 43 does not confer any additional rights on PSEM and EMB which DE and ED do not have under the current legislation. Although clause 43(5) and (6) does not expressly provide that PSEM and EMB may institute legal proceedings (falling within the scope of the Crown Proceedings Ordinance) in their own names, the effect of the two sub-clauses seem otherwise.

Clauses 42 and 43 are similar to the savings and transitional provisions in the Hong Kong Tourist Association (Amendment) Ordinance 2001 (3 of 2001), the Urban Renewal Authority Ordinance (Cap. 563) and the Hong Kong Science and Technology Parks Corporation Ordinance (Cap. 565). These three Ordinances relate to the establishment of statutory bodies which are legal entities separate from the Government. The Provision of Municipal Services (Reorganization) Ordinance (Cap. 552) contains certain similar provisions for the vesting of property, rights and liabilities of the Provisional Urban Council and the Provisional Regional Council in the Government when the two Councils cease to exist.

The present context is different, because the reorganization takes place within the Government. It may be relevant to compare the captioned Bill with the Resolution (L.N. 106 of 2002) made under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) which effects the transfer of statutory functions of Secretaries within the Government. No provision similar to Clause 43(5) or (6) is provided in the Resolution.

Clause 43(5) also provides that PSEM or EMB may be sued for any liability to which he or it is subject under Clause 42(5). It may be possible for third parties who are not aware of section 13 of the Crown Proceedings Ordinance to rely on clause 43(5) and institute civil proceedings (other than judicial review) against PSEM or EMB rather than the Secretary for Justice.

To avoid any confusion, I would urge the Administration to reconsider the need for Clause 43(5) and (6) in the Bill. It is clear from Clause 43(1) that the provisions in that clause apply without limiting the generality of Clause 42. Clause 42(5) provides for vesting of all property, rights and liabilities of DE or ED in PSEM or EMB, as appropriate. If it is the policy intention of Clause 43(6) to make clear that no notice of transfer has to be given to the person bound by a chose in action, the sub-clause may be redrafted to give effect to that intent.

Unless the above point is resolved, it would be helpful if a representative of the Department of Justice could be present at the Bills Committee meeting when the issue is discussed.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

c.c. D of J (Attn. Miss Grace Leung, GC and Ms Vivian Fung, SGC)
LA
SALA1
CAS(2)3