

LEGISLATIVE COUNCIL BRIEF

Hong Kong Examinations and Assessment Authority Ordinance
(Chapter 261)

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY (AMENDMENT) BILL 2003

INTRODUCTION

At the meeting of the Executive Council on 1 April 2003, the Council ADVISED and the Chief Executive ORDERED that the Hong Kong Examinations and Assessment Authority (Amendment) Bill 2003, at **Annex**, should be introduced into the Legislative Council.

JUSTIFICATION

Conduct of examinations and assessment outside Hong Kong

2. With an increase in returned emigrants (or returnees), including their children, from countries like Canada, Australia, New Zealand and the United Kingdom after 1997, there have been increased inquiries about the conduct of, and expressions of interest in taking, the Hong Kong Certificate of Education Examination (HKCEE) and the Hong Kong Advanced Level Examination (HKALE) outside Hong Kong. The demand is especially strong in respect of the Chinese Language. If the HKEAA is empowered to provide such services, it would help returning children fit into senior secondary education or work in Hong Kong more smoothly.

3. With the opening of schools which use Hong Kong curriculum in the Mainland, there is an emerging demand for HKEAA to administer examinations and assessment in the Mainland as well. In fact, one Mainland school started to present students for the HKCEE in 2002. Such demand is likely to grow given the substantial number of Hong Kong people living in the Mainland and who also maintain connection to their residence in Hong Kong (41, 300 persons aged 18 and above according to a Census and Statistics Department's survey in 2001). It has to be noted that over 50% of such people are in the 35 to 54 age group, meaning that there could be substantial education-related demands from their offspring for Hong Kong-based examination and assessment services with a view to expediting their adaptation to the education system, and increasing their career opportunities, in Hong Kong.

4. Apart from the HKCEE and HKALE, which are HKEAA's mainstream business, the HKEAA has also received requests from overseas examination authorities and professional bodies to conduct examinations for them, mainly in Macau and the Mainland. These include the General Certificate of Education examinations conducted by the then University of London Examinations and Assessment Council, the Associated Board of the Royal Schools of Music practical examinations, the Hong Kong Association of Accounting Technicians examinations, and so on. Under the existing provisions of HKEAAO, there is no express power given to HKEAA to respond to such requests. As the HKEAA is recognised in the region as a well established examination and assessment agency, demands from overseas bodies and professional organisations to capitalise on HKEAA's experience and expertise in conducting examinations in neighbouring jurisdictions are likely to continue. Enabling the HKEAA to conduct examinations outside Hong Kong will not only cater for such demands but also bring it closer to its declared vision of becoming a world-renowned examinations and assessment services provider. In future, HKEAA may provide a

greater variety of overseas examination and assessment services as well. Under the existing provisions of HKEAAO, HKEAA could conduct examinations and assessment other than the specified examinations given the Chief Executive's approval. It is considered advisable to set out the relevant authority in clearer terms by expressly stating that HKEAA may determine standards and award certificate for these approved examinations.

5. From an education and manpower policy point of view, there are clear advantages in giving the HKEAA the flexibility to provide services outside Hong Kong. In a globalised economy, we have to attract talent from all over the world. Giving HKEAA the flexibility to administer examinations outside Hong Kong will facilitate local education institutions in recruiting bright students to Hong Kong. These talents will enrich the student mix in local education institutions and enhance the quality of the Hong Kong's workforce if they decide to stay and work in Hong Kong upon graduation.

Raise Penalty Level

6. At present, section 15 of the HKEAAO makes it an offence for a person who is appointed or employed or who assists in the work of the HKEAA to breach the secrecy with regard to matters coming to his knowledge about HKEAA's business. It is also an offence under section 16 if any person impersonates as an employee or agent of HKEAA. Conviction of any one of these two offences is subject to a fine of \$10,000 (equivalent to the existing fine level at Level 3) and 6 months' imprisonment. The level of fine was set in 1977 and has not been adjusted since then. From 1977 to 2002, the price inflation, measured in terms of the Consumer Price Index (A), amounted to 376%. Similar offences in other ordinances attract higher fines than those in the HKEAAO. For example, impersonation offences (a person impersonates or represents himself as being referred to in any certificate or document presented to a relevant professional council or disciplinary committee) under the Architects Registration Ordinance, the Engineers Registration Ordinance

and the Surveyors Registration Ordinance are subject to a maximum fine of \$50,000 (equivalent to Level 5). Similar offence in the Professional Accountants Ordinance is subject to a maximum fine of \$20,000 (equivalent to between Level 3 and Level 4). Taking into account the accumulated inflation over the years since the existing fine at \$10,000 in HKEAAO was set, and the relative severity of the relevant offences stipulated in sections 15 and 16 of HKEAAO, it is considered appropriate to peg the fine level under sections 15 and 16 of HKEAAO to Level 4 which is equivalent to \$10,001 to \$25,000 of present day prices. This is necessary to reflect the intended deterrent effect.

THE BILL

7. The main provisions in the Hong Kong Examinations and Assessment (Amendment) Bill 2003 are –

- (a) clause 2(1) amends section 7(1) of the HKEAAO to empower HKEAA to conduct, on its own or jointly with others, examinations and assessment in or outside Hong Kong;
- (b) clause 2(2) amends section 7(2) of the HKEAAO to confer express power on HKEAA to award certificates to candidates who attain the prescribed standard in approved examinations; and
- (c) clauses 3 and 4 amend sections 15(3) and 16 of the HKEAAO to raise the fine level under the respective sections from \$10,000 (equivalent to Level 3) to Level 4.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be –

Publication in the Gazette

11 April 2003

First Reading and commencement
of Second Reading debate

30 April 2003

Resumption of Second Reading
debate, committee stage and
Third Reading

to be notified

IMPLICATONS OF THE PROPOSAL

9. The proposal is consistent with the vision to develop Hong Kong as an education centre for the region, as well as the desire to broaden the potential pool of educated manpower for Hong Kong. It is in conformity with the Basic Law, including the provisions concerning human rights. The amendments will not affect the current binding effect of the HKEAAO.

10. The HKEAA is a self-financing statutory body. The proposal does not have financial and civil service implications to the Government. It also has no productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

11. We have consulted the HKEAA Council which is fully supportive of the proposal. We have consulted the Education Panel of the Legislative Council on 17 March 2003. The Panel is agreeable to the proposal.

PUBLICITY

12. A press release will be issued when the Bill is gazetted. A spokesman will be available to answer media and public

enquiries.

BACKGROUND

13. Enacted in 1977, the HKEAAO provides for the establishment of the HKEAA and empowers HKEAA to conduct specified and approved examinations and assessment in Hong Kong. At present, specified examinations include the HKCEE and the HKALE, and approved examinations include about 120 examinations which HKEAA administers for other local and overseas bodies.

14. At present, the HKEAAO does not contain any express provision that enables HKEAA to provide examinations and assessment services outside Hong Kong. Giving HKEAA the flexibility to provide examination and assessment services outside Hong Kong is conducive to talent recruitment from outside Hong Kong, thereby upgrading the quality of Hong Kong's human resources.

ENQUIRIES

15. For any enquiries relating to this Brief, please contact Mr Andrew Poon, Principal Assistant Secretary, Education and Manpower Bureau, at telephone number 2892 6501 or fax number 2573 2805.

Education and Manpower Bureau

April 2003

A BILL

To

Amend the Hong Kong Examinations and Assessment Authority Ordinance to empower The Hong Kong Examinations and Assessment Authority to conduct examinations and assessments, and award certificates, in certain circumstances; and to increase certain penalties.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Hong Kong Examinations and Assessment Authority (Amendment) Ordinance 2003.

2. Powers and duties of the Authority

(1) Section 7(1) of the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) is amended –

(a) by repealing “examinations and assessments in Hong Kong and shall –” and substituting “, whether on its own, or jointly with or as agent for other persons and organizations, examinations and assessments in Hong Kong or elsewhere.”;

(b) by adding before paragraph (a) –

“(1A) Without limiting the generality of subsection (1), the Authority shall for the purposes referred to in that subsection –”.

(2) Section 7(2) is amended –

(a) by repealing “restricting subsection (1), the Authority may for the purposes referred to therein” and substituting “limiting the generality of subsection (1), the Authority may for the purposes referred to in that subsection”;

(b) by adding –

“(ca) award certificates to candidates who attain a standard determined by the Authority in any examinations or assessments conducted under paragraph (c);”.

3. Secrecy

Section 15(3) is amended by repealing “of \$10,000” and substituting “at level 4”.

4. Impersonation of members or employees of Authority

Section 16 is amended by repealing “of \$10,000” and substituting “at level 4”.

Explanatory Memorandum

This Bill amends the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) (“the Ordinance”) to –

- (a) empower The Hong Kong Examinations and Assessment Authority to conduct examinations and assessments outside Hong Kong;
- (b) increase the penalties for breach of secrecy and impersonation under sections 15 and 16 of the Ordinance; and
- (c) provide for other related and miscellaneous matters.