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**Paper for the House Committee meeting  
on 31 October 2003**

**Report of the Bills Committee on  
Hong Kong Examinations and Assessment Authority  
(Amendment) Bill 2003**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Hong Kong Examinations and Assessment Authority (Amendment) Bill 2003.

**The Bill**

2. The Bill seeks to amend the Hong Kong Examinations and Assessment Authority Ordinance (Cap. 261) to -

- (a) empower the Hong Kong Examinations and Assessment Authority (HKEAA) to conduct examinations and assessments on its own, jointly with or as the agent for other persons and organisations in Hong Kong or elsewhere, and to award certificates to candidates who attain a standard determined by the Authority in such examinations and assessments; and
- (b) increase the fines for breach of secrecy and impersonation from \$10,000 to Level 4 (\$25,000).

**Background**

Conduct of examinations and assessments outside Hong Kong

3. Currently, the HKEAA has the power under the Ordinance to conduct in Hong Kong -

- (a) specified examinations, i.e. the Hong Kong Certificate of Education Examination (HKCEE) and the Hong Kong Advanced Level Examination (HKALE), and

- (b) other examinations and assessments as the Chief Executive (CE) may approve.

4. With an increase in returned emigrants including their children, from countries like Canada, Australia, New Zealand and the United Kingdom after 1997, there have been increased requests and expressions of interest in taking the HKCEE and the HKALE outside Hong Kong. There is also an emerging demand for the HKEAA to administer examinations and assessment in the Mainland, with the opening of schools which use Hong Kong curriculum in the Mainland.

5. In addition, the HKEAA has received requests from overseas examination authorities and professional bodies to conduct examinations for them, mainly in Macau and the Mainland.

6. At present, the Ordinance does not contain any express provision that enables the HKEAA to provide examinations and assessment services outside Hong Kong. The Administration considers it advisable to set out the relevant authority in clearer terms by expressly stating that the HKEAA may determine standards and award certificate for approved examinations. Amendments to the Ordinance are therefore necessary to empower the HKEAA to provide these services.

#### Increase in penalty level

7. At present, it is an offence under section 15 of the Ordinance 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 the HKEAA's business. It is also an offence under section 16 of the Ordinance if any person impersonates as an employee, agent or member of the HKEAA. Conviction of any of these two offences is subject to a fine of \$10,000 (equivalent to the existing fine level at Level 3) and six months' imprisonment. The level of fine was set in 1977 and has not been adjusted since then.

8. Taking into account the accumulated inflation over the years and the relative severity of the relevant offences stipulated in sections 15 and 16 of the Ordinance, the Administration proposes to peg the fine level under these sections to Level 4 (\$25,000) in order to reflect the intended deterrent effect.

#### **The Bills Committee**

9. At the House Committee meeting on 2 May 2003, Members agreed that a Bills Committee should be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

10. Under the chairmanship of Hon Cyd HO, the Bills Committee has held two meetings, including one meeting held with the Administration and the HKEAA.

## **Deliberations of the Bills Committee**

### Confidentiality of examination materials

11. While the Bills Committee generally supports the policy direction of allowing the HKEAA to conduct examinations in places outside Hong Kong, members have expressed concern about the confidentiality of examination materials, especially if the examinations cannot be conducted in Hong Kong and other places at the same time due to time difference. Hon LI Fung-ying has asked about the measures to prevent leakage of examination materials, as a large number of candidates in different places will be involved in these examinations and advance information technology is available for transmission of information.

12. The Administration has advised that, as far as practicable, examinations will be held at the same time in Hong Kong and in places outside Hong Kong to minimise the risk of leakage of information. The Administration also points out that there is no time difference between Hong Kong and the Mainland or Macau.

13. The Administration has assured members that measures are in place to safeguard the confidentiality of examination papers. Provisions on protection of secrecy of examination information will be included in the agreements or contracts to be signed with partner organisations for conducting examinations in places outside Hong Kong. Breaches of the provisions in these agreements will lead to immediate termination of the agreements and the international reputation of the partner organisation(s) breaching the agreements will be tarnished.

14. HKEAA anticipates that in most cases it will engage the local official examination authorities as the partner organisations such that the law protecting the integrity of examinations administered by them in their own countries will also apply to those examinations conducted jointly with the HKEAA.

15. As regards measures to prevent leakage of examination information, HKEAA has advised that lap top computers are not allowed inside examination venues, and mobile phones have to be turned off and placed underneath the seats. In addition, candidates are not allowed to leave the examination venues during the first 30 minutes of the examination; and those who arrive 30 minutes after the commencement of the examination have to give reasons for being late and their examination papers will be scrutinised to see if there are any abnormalities. Moreover, candidates are not allowed to leave the examination venues with examination papers.

16. In response to members' concern about the security arrangements for transportation of examination papers, the HKEAA has advised that for examinations to be conducted in the Mainland, the HKEAA staff will escort the examination papers to the places where the examinations are to be held. The papers will be safely locked up in a room, with the key and security lock number kept in the custody of two different persons. Examination papers will only be issued on the day of the examination.

17. In response to Hon Cyd HO, the Administration has undertaken to report to the Panel on Education the arrangements to be made between the HKEAA and its partner organisations on conducting examinations in other places.

#### Legal liability and penalty in respect of leakage of examination information

18. Hon Audrey EU and Hon LI Fung-ying have asked about the legal liability and penalty for leakage of examination information in Hong Kong and in other places such as the People's Republic of China (PRC). Noting that sections 15 and 16 of the Ordinance concerning breaches of secrecy and impersonation only apply to persons appointed or employed or who assists in the work of HKEAA, these members have expressed concern whether candidates or their family members/friends will commit any offence in leaking examination information. Hon Audrey EU and Hon LI Fung-ying have also asked about the extra-territorial effect of sections 15 and 16 of the Ordinance.

19. The Administration has advised that a candidate found to have obtained examination information through improper means may be guilty of an offence under the Theft Ordinance and he/she will also be disqualified from the examination. As regards the laws on confidentiality of examination papers in the PRC, the HKEAA advised that public examination papers and related information are classified as state secrets in accordance with the Provisions on State Secrets in Education and Specific Coverage of their Confidentiality issued by the State Education Committee and National Administration for Protection of State Secrets under section 10 of the PRC Law on Guarding State Secrets. A person who contravenes any of these provisions commits a criminal offence and is liable on conviction to imprisonment for up to seven years under section 398 of the Criminal Law of the PRC.

20. The Administration has advised that sections 15 and 16 of the Ordinance concerning offences of breaches of secrecy and impersonation do not have extraterritorial effect. The protection of the integrity of examinations conducted by the HKEAA or jointly with other organisations outside Hong Kong will have to rely on laws of the places concerned.

21. Hon Audrey EU has expressed reservation about relying on the local laws to protect the confidentiality of materials of examinations conducted by the HKEAA in places outside Hong Kong. She has asked whether the Administration considers it necessary to expressly provide for the extraterritorial effect of the provisions on secrecy in the Ordinance.

22. In this connection, Hon Tommy CHEUNG has asked whether the laws on secrecy of examination materials in overseas countries are applicable to the same examinations conducted by the HKEAA in Hong Kong on behalf of its overseas partners.

23. The Administration has explained that unless specified, criminal laws in general do not have extraterritorial effect. Foreign laws protecting the integrity of the examinations conducted by organisations outside Hong Kong are also not applicable to the same examinations conducted in Hong Kong. The arrangements on security of examination materials and confidentiality of assessment and personal data are dealt with by explicit provisions in the agreements signed between the HKEAA and its partner organisations.

24. The Administration has further explained that these overseas organisations rely on the professional competency and reputation of the HKEAA, as well as the legislative framework of Hong Kong in which the HKEAA operates to protect the integrity of their examinations. Similar factors will be taken into consideration when the HKEAA decides on whether and with which agents it may jointly run any examination services outside Hong Kong. The HKEAA will ensure that relevant laws of that place will be referred to in the agreements to be made with the partner organisations. The Administration and HKEAA have stressed that in no circumstances will HKEAA sacrifice the interest of those candidates taking the examinations in Hong Kong.

#### Types of examinations to be conducted by the HKEAA in other places

25. The Bills Committee has noted that section 7(1)(a) of the HKEAA Ordinance provides that, subject to section 13, the HKEAA shall have powers to do all such things as are necessary or advantageous and proper in planning and conducting examinations and assessments in Hong Kong and shall conduct the specified examinations. Section 13 stipulates that CE may give the HKEAA directions of a general character as to the discharge by the Authority of its functions in relation to matters appearing to CE to affect the public interest. The HKEAA shall, in the exercise or performance of any power or duty under this Ordinance, comply with any directions given by CE under this section.

26. Hon Audrey EU has enquired about the scope of powers to be conferred on HKEAA to conduct examinations outside Hong Kong. Referring to section 7(1)(a) of the Ordinance, Ms EU considers that while the HKEAA should be empowered to conduct some specified examinations, there should be restrictions on the kind of examinations it can conduct jointly with overseas organisations.

27. The HKEAA has advised that at the present stage, the HKEAA has planned to conduct mainly the HKCEE and HKALE outside Hong Kong which will help returning children of Hong Kong residents fit into the senior secondary education curriculum or acquire the necessary qualification for seeking employment in Hong Kong. Currently, the HKEAA has received requests from overseas examination authorities and professional bodies to conduct examinations for them, mainly in Macau and the Mainland. The HKEAA will take into account whether local students, education institutions and the workforce will benefit from these examinations in considering whether to accede to such requests.

28. Hon Cyd HO has asked whether it is necessary to conduct the HKCEE and HKALE in the Mainland. She considers that if the objective is to facilitate students in the Mainland to fit into the education system in Hong Kong, it should best be achieved through the admission qualification framework established among universities. As such, overseas students will not be required to sit for the HKCEE or HKALE, and their admission to secondary schools and universities in Hong Kong will be based on the qualifications they obtained in other places. Hon Cyd HO has also asked whether the HKEAA will take into account the differences in curriculum and university admission criteria between Hong Kong and the places concerned in considering whether to conduct examinations outside Hong Kong.

29. The HKEAA has advised that schools with special curriculum designed for children of Hong Kong residents have been developed in the Guangdong Province. Students are required to pass the HKCEE for admission into these schools. In addition, the qualification obtained by candidates in the English subject (syllabus B) of the HKCEE is recognised internationally. There are therefore demands for these examinations from students in the Mainland.

30. On the policy considerations for conducting examinations in other places, the Administration has advised that the policy objective for empowering the HKEAA to conduct examinations outside Hong Kong is to facilitate the development of local education institutions and enhancing the quality of the workforce of Hong Kong. Requests for conducting examinations outside Hong Kong will be considered in accordance with the policy objective and legislative intent of the Bill.

31. The Administration has assured the Bills Committee that the work of the HKEAA is closely monitored by its Council which comprises university representatives and other stakeholders. The HKEAA will have to provide justifications and seek approval from its Council and the Secretary for Education and Manpower (SEM) for conducting new activities.

32. As regards the proposed amendment to section 7(2), Hon Audrey EU has sought clarification on whether the phrase "without limiting the generality of subsection (1)" implies that the HKEAA already has the powers stipulated in section 7(1), and will be free to exercise them unless directed otherwise by CE under section 13.

33. The Administration has explained that section 7(1) stipulates the general provisions on the powers of the HKEAA while section 7(2) stipulates the operational details in exercising these powers, such as the requirement for CE's approval under section 7(2)(c) for conducting examinations other than specified ones. In considering requests for conducting examinations in places outside Hong Kong, the HKEAA will examine carefully whether the request is justified and is beneficial to Hong Kong. CE's power to approve any examinations conducted outside Hong Kong has been delegated to SEM.

#### Examination fees

34. Hon Audrey EU has asked about the fees to be charged for the examinations conducted outside Hong Kong. The HKEAA has advised that it is a non-profit-making organisation and the fee level will have to be approved by the Council of the HKEAA and SEM. It is the policy that the full costs will be recovered for examinations conducted on behalf of overseas partners, and such costs will not be subsidised by the income derived from examinations conducted in Hong Kong. Any surplus generated from conducting examinations outside Hong Kong will be placed in the reserve of the HKEAA.

35. The legal adviser to the Bills Committee has advised that under section 7(2)(b) and (d), CE's approval is required for fixing the examination fees and CE has delegated such authority to SEM in accordance with the Interpretation and General Clauses Ordinance (Cap. 1).

#### Drafting of clause 2

36. Hon Audrey EU has pointed out that the English and Chinese texts of clause 2(1)(a) of the Bill are not consistent with each other. The Administration has agreed to improve the drafting of the clause and will move a Committee Stage amendment (CSA) to clause 2(1)(a).

#### **Committee Stage Amendments**

37. The CSA to be proposed by the Administration (paragraph 36 above refers) is in **Appendix II**. The Bills Committee does not object to the CSA.

**Follow-up action required**

38. The Administration has undertaken to report to the Panel on Education the arrangements between the HKEAA and its partner organisations in conducting examinations in other places (paragraph 17 above).

**Recommendation**

39. The Bills Committee supports the Bill subject to the CSA to be moved by the Administration. The Bills Committee also supports the resumption of the Second Reading debate on the Bill.

**Advice sought**

40. Members are invited to note the recommendation of the Bills Committee in paragraph 39 above.

Council Business Division 2  
Legislative Council Secretariat  
29 October 2003



**Bills Committee on  
Hong Kong Examinations and Assessment Authority  
(Amendment) Bill 2003**

**Membership list**

**Chairman** Hon Cyd HO Sau-lan

**Members** Hon CHEUNG Man-kwong  
Hon LEUNG Yiu-chung  
Hon YEUNG Yiu-chung, BBS  
Hon LI Fung-ying, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Audrey EU Yuet-mee, SC, JP

(Total : 7 Members)

**Clerk** Mrs Constance LI

**Legal Adviser** Ms Bernice WONG

**Date** 2 July 2003

Appendix II

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY  
(AMENDMENT) BILL 2003

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for  
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)(a)	By deleting ", whether on its own, or jointly with or as agent for other persons and organizations," and substituting "(whether on its own, or jointly with or as agent for other persons and organizations)".