



中華人民共和國香港特別行政區政府總部教育統籌局
Education and Manpower Bureau
Government Secretariat, Government of the Hong Kong Special Administrative Region
The People's Republic of China

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3 October 2005

Mr Stephen Lam
Assistant Legal Adviser,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central.

Dear Mr Lam,

Accreditation of Academic and Vocational Qualifications Bill

Thank you for your letter of 15 September 2005. Our reply (in Chinese and English) to your enquiries on the Bill is set out at Annex for your reference, please.

Yours sincerely,

(Thomas Wu)

for Secretary for Education and Manpower

c.c.: DoJ—Miss Selina Lau
Miss Cindy Yau
Miss Sally Yam

Accreditation of Academic and Vocational Qualifications Bill

Clause 2

- (a) “Business with or without a view to profit” includes any business part of which is for profit and part of which is for charity.
- (b) We are preparing some assessment guidelines for the reference of assessment agencies but it is not our policy intent to set out statutory assessment guidelines as the assessment criteria may vary due to different nature and requirements of industries.

Clause 4(2)

Under general circumstances, the Accreditation Authority (AA) shall perform its functions on its own. However, the AA may need to work jointly with consultants, advisory committees, or any other suitable bodies, subject to the prior approval of the Secretary for Education and Manpower (SEM) in the development and implementation of the standards and mechanism for academic or vocational qualifications accreditation underpinning the QF. As the establishment of the QF is a new venture for Hong Kong, we see merits in incorporating certain flexibility to enable the AA to engage other persons or organizations to jointly perform its function subject to the Secretary’s prior approval.

Clause 4(4)(a)

To provide efficient and appropriate accreditation service, the AA needs the flexibility to decide promptly, in consultation with the education and training provider, on the appropriate professional fee to be charged. It is therefore necessary to empower the AA to determine fees to be charged for academic and vocational accreditation and charge any such fees without seeking the SEM’s prior approval. However, the AA’s fee charging policy and its annual estimates of its income and expenditure

shall be subject to the SEM's prior approval.

The fees to be charged for reviews under Clause 9(3) shall be included in a schedule of fees which requires the SEM's prior approval. This is to ensure that the level of fees will not become prohibitively high to the operator/assessment agency/granting body/individual who wants to apply for a review of the determination/decision made by the Accreditation Authority or the QR Authority.

Clause 5(2)

Clause 5(2)(b) to (e) do not provide that the AA may vary or withdraw an accreditation report with retrospective effect. Such variation or withdrawal will operate prospectively. Based on the advice of the Department of Justice (DoJ) that there is a presumption against retrospectivity in interpreting an Ordinance, we do not find it necessary to introduce express provisions to state the legislative intent.

As regards the situation stated in Clause 5(2)(a) under which the report has been produced in reliance of misleading or false information, a retrospective determination may be warranted. We shall consider introducing an express provision (by way of Committee Stage Amendment CSA)) to state the retrospective effect of the variation or withdrawal of the report. With the proposed CSA, it will be clear that the variation or withdrawal of an accreditation report under Clause 5(2)(b) to (e) will operate prospectively.

Clause 6(2)

Under general circumstances, the QR Authority shall perform its functions on its own. However, the QR Authority may need to work jointly with the consultants, advisory committees, or any other suitable bodies, subject to the prior approval of the SEM for the enhancement of the Register in future. As the establishment of the QR is a new venture for Hong Kong, we see merits in incorporating certain flexibility to enable the QR Authority to engage other persons or organization to

jointly perform its function subject to the SEM's prior approval.

Clause 7(5)

The entry (data) of a qualification for the QR is in fact provided by the granting body of the qualification concerned, and this entry is then uploaded onto the QR after a vetting process performed by the QR Authority. If a mistake is identified during the vetting process, the QR Authority will inform the granting body to correct such mistake accordingly and re-send the entry (data) to the QR Authority. As the data is provided all along by the granting body rather than by the QR Authority, any mistake found in the entry of a qualification is caused in the first place by the granting body. Hence, the QR Authority will not be liable to refund the fees under subsection 7(1)(e).

Clause 8(1)(c)

In appointing or re-appointing an assessment agency, SEM may specify the particular industry or branch of industry and the level of QF qualifications under which the assessment agency may grant qualifications recognizing the skills, knowledge or experience acquired by an individual.

Clause 8(2)

While Clause 8(2) sets out the guiding principles for SEM's appointment/reappointment of an assessment agency, Clause 5(2)(c) and Clause 8(4)(a) refer to the AA's determination that the assessment agency is no longer competent to conduct assessment service. The AA should make this professional judgement solely based on the technical competency of the assessment agency rather than the criteria enlisted in Clause 8(2)(a)-(d).

Clause 8(4)(c)

If an assessment agency is bankrupt or has decided to cease its operation voluntarily, SEM may cancel the appointment or re-appointment of such agency.

Clause 9(1)

We foresee that an operator, assessment agency, or granting body may apply for a review either against a rejection made by the AA or the QR Authority, or against the conditions/restrictions (including the length of the validity period) imposed on such determination/decision made by the AA or the QR Authority. In either scenario, we do not see a need to suspend the operation of a determination/decision pending the final result of the review.

For the first scenario, it is a must that the determination/decision should prevail in order to uphold the quality of the learning programmes /assessment services provided under the QF. For the second scenario, a suspension of the operation of the determination (i.e. conditional approval) will be tantamount to the withdrawal of such conditional approval. This may not be to the advantage of the operator/granting body/assessment agency as such arrangement may result in a delay in the recruitment of students for the learning programme (to the operator/granting body) or a delay in the provision of assessment service (to the assessment agency).

Clause 10(3)(a)

According to the Concise Oxford Dictionary, “quality” refers to “the degree of excellence of a thing” whereas “assurance” means “certainty” or “a positive declaration that a thing is true”. We believe that the dictionary interpretation of the term will suffice as a statutory definition may unnecessarily narrow its meaning.

Clause 11(1)(c)(i)

- (a) It is not our policy intent that such request would override a person's common law duty of confidentiality or other statutory duty to keep the documents secret and Clause 11(1)(c)(i) does not so provide.
- (b) There is no penalty for a failure to comply with a request under Clause 11(1)(c) (i).

Clause 11(1)(c)(ii)

- (a) It is not our policy intent that such request would override a person's statutory duty, if any, to seek the consent of his employer to appear before a review committee, and clause 11(1)(c)(ii) does not so provide.
- (b) It is up to the employer whether to give consent to an employee to appear before a review committee.
- (c) There is no penalty for a failure to comply with a request under Clause 11(1)(c) (ii).

Clause 16(1)

Apart from the administrative or other costs incurred or likely to be incurred in relation to the matter to which such fee relates, the AA or the QR Authority may also consider the market acceptability of the fee level as well as other market conditions when determining its fee.

Clause 21(4)

The Executive Committee is one of the committees of the HKCAA. With the new and expanded roles to be undertaken by the HKCAA, the HKCAA will need greater flexibility to consider and to devise the most appropriate committee structure to oversee the performance of its

functions. The Administration understands that it is the HKCAA's intention not to maintain the Executive Committee in its present form .

Clause 21(6)

Clause 2 of the Bill gives the definition of "accreditation test" to be performed by the Accreditation Authority (Clause 4) and these are specifically related to the QF. Clause 21(4) gives the definition of the term in the context of the functions to be performed by the Council including those unrelated to the QF. Clause 21 (6)(e) enables the Council to assess the totality of an individual's qualifications obtained locally or overseas vis-à-vis the standard of a particular local qualification.

Clause 23(4)

Please see the reply under Clause 10(3)(a) above

Clause 23 (5)

Please refer to the definition of "resident of Hong Kong" in section 2(1) of the existing Cap.1150.

Clause 25(2)

There can be cases where the HKCAA may be involved in the accreditation of a non-local institution in conjunction with a non-local accreditation body.

Clause 25 (5)-(9)

The new section 5(2)(ba), the amended section 5(2)(c) and the new section 5(2)(d) enable the HKCAA to specify fees and charge such fees for publishing any materials, enabling any person to use any

facility/service (other than accreditation tests) provided by the Council; and conducting seminars etc. respectively. We believe that the HKCAA as an independent self-financing organization¹ should be given the flexibility to determine fees in relation to these activities. In any event, the Council's fee charging policy and its annual estimates of its income and expenditure shall be subject to the SEM's prior approval.

Section 5(2)(ea) refers to the fees charged for reviews that are subject to the SEM's prior approval. This is to ensure that the level of fees will not become prohibitively high to the operator/assessment agency/granting body/individual who wants to apply for a review of the HKCAA's determination/decision.

Clause 25(11)

Payment of travelling expenses, etc has been dealt with by Clause 25(12) which amends section 5(2)(h) of Cap. 1150. Under the amendment, the HKCAA may provide payment of travelling expenses, etc, to members of the review committee.

Clause 25(14)

Apart from the administrative or other costs incurred or likely to be incurred in relation to the matter to which such fee relates, the HKCAA may also consider the market acceptability of the fee level as well as other market conditions when determining its fee.

Clause 26

- (a) Both "the validity period of the determination and the conditions or restrictions" do not apply to "an individual".
- (b) The new section 5A (2)(b)-(e) do not provide that the AA may vary or withdraw an accreditation report with retrospective effect. Such

¹ Currently, the HKCAA does not receive recurrent subvention from the Government.

variation or withdrawal will operate prospectively. Based on DoJ's advice that there is a presumption against retrospectivity in interpreting an Ordinance, we do not find it necessary to introduce express provisions to state the legislative intent.

As regards the situation stated in section 5A(2)(a) under which the report has been produced in reliance of misleading or false information, a retrospective determination may be warranted. We shall consider introducing an express provision (by way of Committee Stage Amendment) to state the retrospective effect of the variation or withdrawal of the report. With the proposed CSA, it will be clear that the variation or withdrawal of an accreditation report under Clause 5(2)(b) to (e) will operate prospectively.

Clause 28

Under the HKCAAO, the HKCAA has to seek prior approval from the SEM (power delegated to PSEM) of the terms of remuneration of its employees and advisers. We propose to remove this requirement as the HKCAA being an independent self-financing organization should be given the flexibility to determine the terms of remuneration and conditions of service of its employees and advisers. In any event, the HKCAA's staffing expenses are included in its annual estimates of income and expenditure, which are subject to the prior approval of SEM (power delegated to PSEM).

Clause 31

The proposed repeal of Section 10 of the HKCAAO regarding consultation with the SFST is to remove the rigid requirement for the SEM to consult the SFST whereby the SEM's decision is sought on financial matters. Such requirement does not apply to other self-financing organisations under the EMB's purview such as the Construction Industry Training Authority (governed by Cap. 317) and the Clothing Industry Training Authority (governed by Cap. 318). In order to streamline the approval process and taking into account the SEM's

policy responsibility over the HKCAA as an independent self-financing body, we propose to dispense with this requirement. As the housekeeping bureau of the HKCAA and the Council's partner in the implementation of the quality assurance mechanism underpinning the QF, the EMB knows the Council's policies well and will be able to maintain effective monitoring of the Council's operation, including its fees and charges.

The SFST agrees to the repeal of Section 10 based on the consideration that the proposal would streamline the administrative procedures within the Government and taking into account the fact that the SEM has the policy responsibility over the HKCAA; and that the latter is a self-financing body instead of a subvented body receiving recurrent subvention from the Government. The repeal does not mean that the SEM will be deprived of the opportunities to consult the SFST in future. We may consult the SFST and other government bureaux/departments (e.g. Secretary for the Civil Service, Director of Accounting Services) as and when necessary before approving the fees, charges, etc.

Clause 35

(a) Please see the reply under Clause 9(1) above

(b) "指" is used to achieve internal consistency within Cap.1150.

(c) Please see the reply under Clause 10(3)(a) above

(d) Please see the reply under Clause 11 (1)(c)(i) above

(e) Please see the reply under Clause 11 (1)(c)(ii) above

(f) Please see the reply under Clause 35(b) above

Clause 39

Regarding Clause 39, it is possible for the HKCAA to delegate the performance of its functions to a committee (under section 8(1) of Cap. 1150) or to any person appointed under section 5(2)(a) of the amended Ordinance (under section 8(2) of Cap. 1150 as amended by Clause 29). Upon consultation with DoJ, we plan to introduce CSA to ensure that representations or statements made to a committee/person/group of persons performing the functions of the HKCAA will be caught by the offence provisions.

Clause 41

- (a) According to the new section 27(4)(a), the Executive Committee shall continue to exist as a committee established under paragraph 7(1) of Sch 2, and a member holding office as a member of the Executive Committee continues to hold office as a member of that committee. Upon the commencement of operation of the amended Ordinance, the Executive Committee will be the same as any other committees established by the Council and its vacancies and appointments shall be dealt with in accordance with the amended paragraph 7 of Sch 2.
- (b) Upon the commencement of operation of the amended Ordinance, the Council shall deal with vacancies and appointments in accordance with the amended section 3 of Cap.1150.
- (c) As the expiry of the membership of all the existing members falls on the same date (30th September 2006), the new composition of membership of the Council will be formed after the term of office of all the existing members expires.