

立法會
Legislative Council

LC Paper No. CB(2)380/03-04
(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/02

**Bills Committee on
Education (Amendment) Bill 2002**

**Minutes of meeting
held on Friday, 7 November 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Cyd HO Sau-lan (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon SZETO Wah
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon LEUNG Yiu-chung
- Public Officers attending** : Mr M Y CHENG
Deputy Secretary for Education and Manpower (3)
- Mrs YU LAW Siu-man
Senior Education Officer (Education Ordinance Review
and Compliance)
- Mr W L CHEUNG
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Doris CHAN
Chief Assistant Secretary (2)2

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Stanley MA
Senior Assistant Secretary (2)6

I. Confirmation of minutes

[LC Paper No. CB(2)233/03-04]

The minutes of the meeting held on 24 October 2003 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)231/03-04(01) and CB(2)1723/02-03(01) circulated to members]

2. The Bills Committee deliberated on the provision of alternate managers for School Sponsoring Body (SSB) managers, the powers of SSB, the role of the principal, the liability of Incorporated Management Committee (IMC) managers, and the insurance coverage for liability [paragraphs 29 to 40 of LC Paper No. CB(2)1723/02-03(01)] (Index of proceedings attached at **Annex**).

Provision of alternate managers for SSB Manager

3. Some members considered that to ease the concern of SSBs, the Administration should consider whether provision could be made in the Bill for alternate SSB managers to attend and vote at IMC meetings in place of the SSB managers who were absent. They held the view that as SSB managers participated in IMC work on a voluntary basis and most of them had other commitments, some of them might have difficulty to attend all IMC meetings. In response, the Administration undertook to consult the major stakeholders including parents and teachers on the provision of alternate SSB managers under the proposed statutory framework in the Bill.

Powers of SSBs

4. Members expressed concern about the powers of IMC to use and invest its funds, borrow money, solicit and receive gifts or donations by virtue of proposed new sections 40AE(2)(d), (e), (f) and (h). They discussed the impact of a substantial investment loss on school management and the responsibility of

SSB in settlement of IMC debts which had not been settled in full. They requested the Administration to -

- (a) define the meaning of "high-risk investment" referred in paragraph 34 of the Administration's paper and explain how the power of IMC to invest its funds would be monitored;
- (b) consider whether an IMC should be required to seek the approval of SSB before it could borrow money; and clarify whether a SSB would ultimately be held responsible for liabilities which had not been settled in full by an IMC; and
- (c) re-examine the need to empower an IMC to solicit and receive gifts or donations; and re-consider the powers and responsibilities of SSB and IMC in solicitation of gifts or donations.

Liability of IMC managers

5. Members expressed concern about the meaning of "act in good faith" in new section 40BG for exemption of an IMC manager from civil liabilities arising as a result of the performance of any functions of IMC or of his office as a manager. Assistant Legal Adviser (ALA) referred to her letter of 17 April 2003 to the Administration [LC Paper No.CB(2)1818/02-03(01)] and advised members to discuss the following -

- (a) how the test of "acting in good faith" in new section 40BG could be satisfied, e.g., when a manager was not present at a meeting, or when he notified an act at a subsequent meeting, or an alternate manager voting at a meeting;
- (b) whether it would be relevant to compare the liabilities of a director of a limited company with the liabilities of a manager;
- (c) whether the Administration would consider providing an indemnity to a manager against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment was given in his favour or in which he was acquitted along the lines of section 165 of the Companies Ordinances (Cap 32);
- (d) the burden and standard of proof in proceedings against a manager of the school under section 18A, section 87 and regulation 101; and explain why the liability of an IMC manager was different from that of a director or other officer concerned in the management of a company under section 101E of the Criminal Procedure Ordinance (Cap 221), i.e., the prosecution

should prove that the offence was committed with the director's consent or connivance;

- (e) the policy intent of the defence in section 18A(4)(a), section 87(10) and regulation 101(9); and clarify whether there was inconsistency between the English and Chinese versions, i.e., "without his knowledge or consent" and "既不知道亦沒有同意"; and clarify whether there was inconsistency with the existing section 87(10) and regulation 101(9);
- (f) how a person could satisfy the test of taking "all reasonable steps" to prevent the contravention in new section 18A(4)(b), section 87(10) and regulation 101(9), and whether the defence would be available to a principal; and
- (g) whether the reason for having members of an IMC held personally liable subject to the availability of statutory defence was to be consistent with the current policy in relation to members of a management committee.

6. Members agreed to follow up discussion of the liability of IMC managers when the Administration had provided a written response to ALA's queries in paragraph 5.

III. Any other business

Date of next meeting

7. Members noted that the next meeting would be held on Thursday, 13 November 2003 at 2:30 pm.

8. The meeting ended at 12:45 pm.

Council Business Division 2
Legislative Council Secretariat
4 December 2003

**Proceedings of the meeting of the Bills Committee on
Education (Amendment) Bill 2002
on Friday, 7 November 2003 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
0000 - 0358	Chairman	Confirmation of minutes.	
0359 - 0732	Chairman Mr SZETO Wah	Way forward and further consultation with deputations.	
0733 - 3200	Mr CHEUNG Man-kwong Admin Mr SZETO Wah Chairman	Provision of alternate managers for Sponsoring Body Managers in IMC schools.	See para 3 of the minutes
3201 - 011510	Chairman Mr CHEUNG Man-kwong Admin Mr SZETO Wah Ms Emily LAU	Definition of "high-risk investment" and the power of IMC to invest its funds.	See para 4(a) of the minutes
011511 - 013530	Chairman Mr CHEUNG Man-kwong Admin Ms Emily LAU Mr SZETO Wah Mr Tommy CHEUNG Mr YEUNG Yiu-chung Ir Dr Raymond HO	- Power of IMC to borrow money, solicit and receive gifts or donations; and - Power of a SSB to manage its funds and assets; and to approve an IMC to borrow money.	See para 4(b) and (c) of the minutes
013531 - 013625	Chairman	Role of principal in school management.	
013626 - 015250	Chairman Mr CHEUNG Man-kwong Admin Mr SZETO Wah ALA1 Mr LEE Cheuk-yan	Liabilities of IMC managers.	See para 5(a) - (g) of the minutes
015251 - 015259	Chairman	Date of next meeting.	