

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 8 July 2004

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, S.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING, S.B.S., J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN KWOK-KEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S., J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

DR THE HONOURABLE LAW CHI-KWONG, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE, J.P.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE LAU PING-CHEUNG, S.B.S.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE MA FUNG-KWOK, S.B.S., J.P.

MEMBER ABSENT:

THE HONOURABLE HUI CHEUNG-CHING, S.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

PROF THE HONOURABLE ARTHUR LI KWOK-CHEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

BILLS**Second Reading of Bills****Resumption of Second Reading Debate on Bills**

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung.

EDUCATION (AMENDMENT) BILL 2002**Resumption of debate on Second Reading which was moved on 4 December 2002**

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, the Education (Amendment) Bill 2002 (the Bill) was introduced in the last Legislative Session. No one can ever imagine that this Bill would become one of the Bills which have been proposed for discussion for the longest period of time in the history of this Council. Some people might question why a Bill introduced for participatory decision-making, and more transparent and accountable school governance would arouse so huge and lengthy disputes? However, I believe colleagues who have taken part in the scrutiny of the Bill would realize that, the concept of the Bill might appear to be simple and high-sounding, but the content of the Bill as introduced by the Government is another story. In fact, we can see that the hard-sell approach adopted by the Government and the raw drafting of the Bill have both added points of contention. We consider that it is indeed necessary to conduct an open debate to let people understand the above issues. Otherwise, the public may blame us for wasting a lot of public money on some meaningless discussions, or, they may be misled by the officials of the Education and Manpower Bureau, accusing us of striving for democracy on the one hand, and opposing it on the other.

Madam President, the objective of the Bill is to enable more stakeholders to participate in school management, and to improve the transparency and accountability of school governance. Democratization of school management is a goal that no one would oppose in principle, and it is also a goal we have been fighting for over a long period of time. However, as pointed out by many people, by supporting democratization of school management, does it mean that

we also have to support the Bill? In other words, does the Bill give expression to real democratization of school management?

Both the Government and organizations supporting the Bill tend to package the Bill with democratization of school management. I wish to point out that the democracy mentioned therein comes with conditions, for it must involve fairness and devolution of power, or else we cannot call it democratization. On the contrary, from the Bill, we see many traces of government intervention in many areas.

The Permanent Secretary (PSEM) mentioned in an interview that the objective of education is to take care of the need of every pupil. In any continuous devolution of powers by the Government, the underlying principle should be allowing policy-making to be done by people who are the nearest to the interest. Undoubtedly, as parents and teachers are people who know these pupils best, they should thus be given the power to participate in forming school policies and deploying resources. The approach and concept of the PSEM are not wrong, only that she does not practise what she preaches. We have to ask a question: Can the Bill really make the Government devolve powers, or will the powers continue to be held by officials who do not know much about the pupils — especially those in the Education Manpower Bureau? Actually, as many people have pointed out, the Bill seeks to make school sponsoring bodies (SSBs) give up their powers while the education authority continues to centralize all the powers.

For instance, in addition to attending meetings of the school management committee (SMC), Education Manpower Bureau officials can also be appointed as members of the SMC when it is "suitable" and "appropriate", and they can refuse the registration of school managers. However, the meanings of "suitable" and "appropriate" are not clearly defined in the Bill. As such, the Bill leaves enormous room of interpretation to the officials, which in effect gives them expanded power.

The recent case of Mr FUNG Ka-keung, an elected manager of a school, is a case in point. He had been elected by the alumni association, but unfortunately, he was not accepted by the Administration after election and his registration as school manager was refused. If a person returned by way of democratic election by the alumni association were refused registration as school

manager, what exactly is democracy? I must also ask: In drafting the amendments to the existing Education Ordinance, why the Administration does not stipulate at the same time more stringent provisions, so that the power can be exercised only in extreme cases, thus restraining the power of officials? Nevertheless, on the ground of the overall interest of pupils, the Government considers it necessary to retain the provision to ensure that there will be a suitable person to exercise the power when the responsibilities are devolved to the incorporated management committee (IMC). However, why such person must be subject to vetting by Education and Manpower Bureau officials before he can act in the interest of pupils? Why can someone returned by the alumni not ensure the interest of pupils?

In fact, in the Bill, there are preservations of power for the PSEM. For instance, the provisions on approving draft constitution and taking over schools are very vague, giving the education authority more room for interpretation, and their power is thus increased rather than reduced. If we have a genuine democratic system, why there is such an imbalance in the sharing of power? Where has the autonomy of schools gone? However, the Government may of course say that many of the restrictions have always been there without any increase. Yet, the Government must understand that the key difference of the Bill is that it aims at democratizing school management. When talking about democratization of school management, do we have to respect the decision made by an election? Unfortunately, our decisions made by elections are always restricted and suppressed by the Government. When we talk about democratization of school management, are we only paying lip service to it? Also, people may ask if this kind of democratization of school management is indeed crying wine and selling vinegar.

Furthermore, the Bill is unreasonable and unfair in that it applies differently to various types of schools. According to the Bill, more than a thousand subsidized schools and other aided schools, such as government schools, Direct Subsidy Scheme (DSS) schools and English Schools Foundation (ESF) schools, are subject to different regulations and practices. Also, the most ridiculous thing is, aided schools joining DSS will be exempted from the regulation of the Bill. In simple terms, if a school is baptized by DSS, it will be exempted from the fate of being taken over. People are thus doubtful that whether the Government wants to use the Bill to create an "incentive" to strengthen its DSS policy, or whether it really wants to pave a thoroughfare for education.

When we questioned why the Government had to give such a privilege to DSS schools, the officials' response was that as DSS was a new initiative and DSS schools were small in number, protection was thus necessary. We cannot but ask a question: Is it not the Government who emphasizes that the objective of the Bill is to protect schools and the sound development of the entire education system? Why is it now saying that particular schools need protection, and that they do not need the Bill to help them develop their objects in education? What exactly is the Government saying? Is it being self-contradictory? If the Bill is considered so constructive, why does it not benefit all schools in the territory? While adopting double standards and unfair treatment, what is the democracy that our officials are talking about?

As pointed out by an academic, the purpose of school management is to allow schools to operate in their own way, rather than on an identical model for all schools. This is absolutely not an expression of freedom and democracy, but only a process of centralization of power of the education authority.

Madam President, besides the principle, the approach adopted by the Government in promoting the Bill is also problematic. The Government has been promoting school-based management (SBM) since 1991, and schools are encouraged to participate on a voluntary basis. However, at that time, only a total of 334 schools (about 30%) joined the scheme and only 65 schools participating in the scheme included teacher and parent managers in their SMCs. As the percentage is considered low, the Government wants to mandate implementation of the scheme by legislation. The approach adopted fully reflected that the government officials were headstrong on the issue. Instead of finding out why the system has found little favour and reflecting on their problems, the Administration pursues the legislative route to force it on people. Is it democracy? Can it be conducive to harmony in society? As the saying goes, good wine needs no bush, so if the Government really thinks the policy is good, schools will follow on their own accord. Now that schools do not want to follow, it means that there are problems. Is it appropriate for the Government to adopt a high-handed approach, but not to reflect on itself?

In fact, as early as in February 2000, when the Government conducted a consultation on the proposed framework on SBM, a fair number of SSBs expressed enormous reservations. Their prime concern was that if there were other people in the SMCs, the vision and mission of their schools would be

eroded. Their worries are absolutely not unfounded, for with parent and teacher representatives in the SMCs, schools will tend to be more school-oriented, and there will be fewer considerations for the macro outlook of the SSBs. In addition, the objectives of parents and the SSBs may not be the same; parents may only look at the interest of their own children. As their children will not stay in the school for a very long time, they will tend to give up long-term objective for short-term concerns. As such, the vision of the SSBs to make changes in the overall concepts of education will be dealt a heavy blow.

Instead of emphasizing that the Bill has protected the interest of SSBs, such as pointing out that the SSBs can still control 60% of membership of their SMCs, the education authority should try to think about how to address the concerns of these organizations. However, an organization generally prefers to work with people who share the same views, unlike the Legislative Council here, with the majority always suppressing the minority, or to suppress people by some unreasonable issues. This is not democratic. We hope to have harmony and to join hands to work together. The officials have always told us that the SSBs can still maintain their spirit in sponsoring the schools, as they can still control 60% of the membership. Does it mean that they are going to argue every time and put things to the vote before a policy can be made? Is it good for the SSBs? Moreover, we are worried that, in the entire legislative process, the Government seemed to have employed the tactic of drawing parents over to its side, discouraging them from discussing with SSBs in a rational manner, thus intensifying the problem, which in turn damages the harmonious atmosphere of the entire community.

In the past, the Government used to keep emphasizing that democracy and greater transparency could be achieved by the Bill. In my opinion, it was meant to cover up the evils of the Bill. The Government has also been accusing us of extending the scrutiny process because we did not really want to pass the Bill? Is it true? In fact, colleagues who have taken part in the scrutiny would know that, had we not studied the Bill in great detail, we would not have discovered so many omissions in the Bill. For instance, under the old Regulations, the total number of pupils allowed on any rooftop, playground, verandah or balcony of a school shall not be greater than one for every 2 sq m, and violation of such will be liable to penalties. Provisions of a similar nature are indeed outdated. If we did not scrutinize the Bill in detail, we would not have discovered such outdated provisions and would not have been able to demand amendments. As

a matter of fact, due to our hard work, the Government has made improvements in a lot of areas. Therefore, I feel that the Government has been unfair and inappropriate by accusing us of delaying the process, thus inducing many parents and organizations to blame the Council for wasting public money and precious time. I hope the Secretary can clarify this when he speaks later, explaining whether the prolonged scrutiny process has been due to Members' reluctance of passing the Bill. We hope the Secretary can explain in detail and tell the public whether our scrutiny has indeed been helpful to the Bill or impeding progress.

In scrutinizing the Bill, we discovered another problem that is even more important, that is, the relationship between the Bill and the Basic Law. At the later stage, we discussed the possible conflicts between the Bill and the Basic Law. For example, Article 141 para 3 of the Basic Law provides that "Religious organizations may, according to their previous practice, continue to run seminaries and other schools". However, there is really a problem, that is, how could they continue to run schools according to their previous practice? If the Bill is passed, these organizations, if they do not set up IMCs, will not be able to continue to run schools any longer. Thus, we found this a major problem in our discussion. Though we have been subsequently given legal advice by the Administration, we feel that controversies may still arise on this subject in the Court. Hence, if we still want to push through the Bill in such a rush, these serious problems would become loopholes that might lead to a lot of litigations in the future. In that eventuality, there will be more wasting of public money. Thus, if possible, I hope very much that the Government can withdraw the Bill and not to push it through at this stage, or else, the Bill will serve little purpose. Furthermore, the Government has always said that the Bill would be indeed very good to the education system in Hong Kong. Given this, why are SSBs not allowed to participate on a voluntary basis? Why does the Government not introduce the Bill in other ways to allow schools to adapt to its content gradually, instead of pushing through the Bill? I very much hope that the Government can consider these questions.

Madam President, I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, the Education (Amendment) Bill 2002 (the Bill), evolved into a territory-wide controversy, has been challenged as a political issue of the Government trying to

manipulate education and deal a blow to SSBs. The Bill has damaged the long-standing partnership relation between the Government and SSBs, breaking the harmony in the education sector. Even if the Bill is pushed through, the Government will only have won the process of legislation, while losing the support of the education sector.

During the course of scrutiny, this Council has put in strenuous efforts to improve the drafting of the Bill and proposed constructive amendments and moderate alternatives, with a view to addressing divergent views, seeking harmonious SBM and establishing a pluralistic system that embodies participation by parents, teachers and alumni. Nevertheless, the Government has adopted a hard-handed attitude and refused to revise the most significant provisions and withdraw its excessive powers which include cancelling the registration of managers should a school fail to set up an IMC and taking over in effect the governance of the school, thus setting a time bomb for conflicts in the future. The Government's hard-handed approach shows that it is determined to achieve its objective within a time limit. Schools failing to meet the requirement are prone to punishment. No wonder people are doubtful that the Government has the ulterior political motive of manipulating education and dealing a blow to SSBs.

Madam President, with regard to the Bill, I wish to raise six important points:

(1) The Bill centres around incorporating school management committees (SMCs)

By simplifying the objective of the Bill as simply inviting parents and teachers to participate in school management, we fail to see the wood for the trees. In fact, the principle of inviting parents to join the SMCs to participate in school management has never been a matter of dispute in the course of scrutiny. The Democratic Party has all along supported the participation of parents and teachers in the SMCs. The most fundamental and significant amendment is the incorporation of SMCs, forcing SMCs of all aided schools in the territory to break away from the governance structure of the original SSBs within a period of five years and to become an independent incorporation. The Bill may lead to

the splitting, breaking up and conflicts between SSBs and IMCs, creating confusion in the education sector.

(2) The Bill challenges the remuneration structure of teachers under the pretext of SBM

I am specifically concerned that the Government attempts to push forward the policy of a lump sum grant for teacher remuneration under the pretext of SBM. When the Bill was first tabled before this Council, section 40AE(2)(b) allowed an IMC to determine the terms and conditions of service of its teaching staff. It was an important hint. Under the strong request of the Hong Kong Professional Teachers' Union, the Government revised the provision to specify that the SMC should be subject to the Codes of Aid in maintaining the stability of teacher remuneration. However, the Education and Manpower Bureau has kept sounding out the press on the feasibility of a lump sum grant, allowing schools to determine the remuneration of not more than 20% of their teaching staff. The Government has repeatedly flied the balloon to try to change the pay structure of teachers. Its motive is obvious to all. I must warn the Government not to take advantage of the flexibility of SBM to tackle individual IMCs one by one, to gradually implement the lump sum grant policy, with a view to damaging the teacher remuneration mechanism.

(3) The Bill confers excessive power on the PSEM

Under the pretext of democratization of school management and establishing a participatory SBM framework to devolve responsibilities, the Government is in fact implementing SBM by devolving the responsibilities of SSBs, but not those of the Government. The PSEM still enjoys excessive power in controlling education as in the colonial era.

Generally speaking, the Bill is a hybrid of powers. Apart from the absolute powers conferred on the Government during the colonial era, the new provision also gives the PSEM expanded power in terms of SBM. This is a piece of legislation to merge powers. In the course of scrutinizing the Bill, Members pointed out one after another that the combination of old and new provisions would give the PSEM even greater powers and the objective of devolution of power would not be genuinely achieved.

Apart from denying that the power of the PSEM would somehow be expanded, the Government has been so shameless as to say that the power of the Government is, instead of too wide, too little. In fact, sections 40AE(3)(b) and 40CC proposed in the Blue Bill empower the PSEM to give directions to all schools or individual school to require the ICMs to comply with the directions given in exercising its power. Under the strong objection of this Council, the Government removed these two provisions, but the PSEM's power of intervening in the SMCs is still found everywhere in the Bill. For instance, the PSEM may appoint an unlimited number of managers into the SMCs, refuse or even cancel the registration of elected managers, which is in variance with the spirit of SBM. The Government must take the lead in practising self-restraint and to exercise the relevant power only in cases of emergency.

(4) The Bill adopts double standards in that Direct Subsidy Scheme (DSS) schools and government schools are exempted from regulation

It is not fair that only aided schools are subject to the Bill. As government schools, DSS schools and aided schools are all subsidized by the Government, they should be treated equally in being required to be subject to the Bill. While saying that SBM is a good policy, why does the Government only require its implementation among aided schools, but not DSS schools and government schools? According to the Government, as DSS schools are subject to market demand and parental choices, it is not necessary to regulate them. As a matter of fact, the enrolment of aided schools and government schools is also subject to parental choices. The Education Manpower Bureau also uses the adequacy of pupil enrolment as its basis of whether or not to close down a school. It is indeed a market of parental choices, without any difference from the DDS schools. Why does the Bill adopt differential treatment and double standards by regulating only aided schools, but not DSS schools and government schools?

(5) A great number of inconsistent and draconian penalties are found in the Bill

Some of the criminal provisions related to section 87 of the Education Ordinance and regulation 101 of the Education Regulations involve outdated, ridiculous and draconian penalties. For instance, the total number of pupils allowed on any verandah or balcony at any time shall not be greater than one for every 2 sq m, managers and principals contravening such requirement will be

liable to one-year imprisonment or a fine of \$50,000. This requirement may make fire drills or even pupils queuing up in the course of leaving school a breach of the law.

There are also many criminal penalties relating to delay of administrative functions. For instance, if any person ceases to be the manager of the school, the principal of the school ceases to hold office or any teacher is employed or ceases to hold office, the school supervisor shall give notice of the event to the PSEM within one month, otherwise he is liable to imprisonment for a maximum period of two years and a fine of \$50,000. These penalties are indeed ridiculous and harsh, failing to meet the objective of "separating administrative functions from criminal liabilities". Under the strong objection of this Council, the Education and Manpower Bureau has eventually agreed to repeal or decriminalize these unreasonable penalties, so that teachers and parents will not be caught by the law inadvertently.

However, in the course of scrutiny, we can see in full the hasty and raw drafting of the Bill by the Government, "regardless of the consequence, railroads the legislation in this Council and persecutes the faithful and honest people". By emphasizing only the importance of participation of parents and teachers in SMCs, it has not enabled people to realize the criminal liabilities and risks to be borne by the IMCs, which is totally irresponsible and unethical.

(6) Safety valve mechanism must be provided in the Bill

The greatest danger and conflict inherent in the Bill is, if a school fails to establish an IMC at the end of the five-year transitional period, the Government may cancel by virtue of the law the registration of school managers, which in effect allows the Government to take over the governance of the school. This is a time bomb which may explode at any moment with many schools involved. This provocative provision made by the Government must be defused. A number of the largest SSBs, operating hundreds of primary and secondary schools, have expressed strong opposition to the Bill and object to establishing IMCs. If the Government insists on its stance, once the deadline of full implementation is reached, the contradictions and conflicts between the Government and the SSBs will explode. It will be most unfortunate for the education sector. Madam President, even though there may be numerous merits with IMCs, why must a deadline be set for its compulsory implementation? Why is the IMC the only one model for SBM? Why are

SSBs not given other options, but forced to establish IMCs? Why are schools, if they fail to set up an IMC, subject to replacement of school managers and their governance being taken over even though they are running smoothly and are welcome by parents? The IMC is so superior that it is like a powerful weapon, and people can raise no queries or objections. It is like the slogan of LIN Biao, a radical leftist of the Cultural Revolution era, "No matter you understand it or not, just enforce it anyway". To implement the IMC, the Government went so far as to provoke conflicts between parents and SSBs, damaging the partnership relation it has built up with the SSBs. Is the Government being foolish, or has it other motives? Is it devolution of responsibilities or breaking the governance in parts? Is it democratization or religious assimilation? The Government must response to and address these questions.

To address the concerns raised by the SSBs, I have put forward a reconciliatory alternative, an amendment introduced for the implementation stage, to set up a safety valve mechanism. The mechanism will not only allow the Legislative Council to review and conclude the implementation of different models of SBM, but also to enable the Council, if necessary, to extend the deadline for full implementation by way of a resolution, to avoid conflicts arising from taking over of schools and a violent storm in the education sector. Of course, if the implementation of the Bill is smooth, it is not necessary to activate the safety valve, or there is simply no impetus to activate it, and the timetable of full implementation in 2010 will remain unchanged.

Madam President, even this amendment which is so neutral and mild is still opposed by the Government. It proposes instead a resolution with a deadline of two years, so as to postpone the crisis from taking place by two years, leaving only a two-year timespan for the safety valve. The move of the Government is creating crisis for itself and also a gesture of exerting superior power over the SSBs.

Mrs Fanny LAW said that it was baffling that the Democratic Party should object to the Bill. In fact, from the Bill on SBM, we can hardly see any democracy as the Government has all the power. The Bill is a sham attack to divert the opponents' attention, and the crux is not to involve participation of parents and teachers in the SMC, but to divide schools and break their governance into pieces. Its real purpose is to deal a blow to SSBs and establish the Government's authority.

Madam President, the Democratic Party has not made a volte-face, for we still support the provisions on involving participation of parents and teachers, but for other provisions, we are not going to help the Government to attack the SSBs. The Democratic Party will spare no efforts in moving amendments. We also know that all our amendments will probably lose, and my amendment may not be able to be tabled, not to mention being put to the vote. Nonetheless, as the Bill is no longer safe under the circumstances, to prevent conflicts and crisis from emerging, we will oppose the Bill.

Madam President, I so submit.

MS EMILY LAU (in Cantonese): Madam President, during this Legislative Session, this Education (Amendment) Bill 2002 is one of the most contentious among the numerous Bills scrutinized by the Legislative Council. Madam President, in fact, you can see that since the transfer of sovereignty, the people have criticisms on a lot of issues. They think that the Chief Executive is not doing a good job. Like enacting laws on Article 23 of the Basic Law last year, the situation was tenser — people took to the streets and the reaction was very strong, resulting in the stepping down of a Bureau Director.

Although the backfire of this Education (Amendment) Bill 2002 may not be so severe, the impact it may create is very far-reaching. I believe Secretary Prof Arthur LI himself will understand that numerous surveys have reflected that the people of Hong Kong, as well as parents and teachers, are losing their confidence in the education system. This is because, in their minds, too many things warrant reform. On the other hand, some policies are changing too rapidly, making them confused. If the parents have the means, they will mostly send their children overseas, or if they think it would be best for their children to receive education with the company of taxpayers, they will send their children to local international schools. They are using their feet to vote "No" on our education system.

Of course, Secretary Prof LI may not have to take up all the responsibilities, but I believe the Secretary is a reasonable person and he will understand that this is a very difficult problem. We have invested a lot of money in the education system, but we are getting endless grumbles and complaints in return. The Legislative Council is not here to incite. We also

want to act as the middleman on a lot of issues; we also want to arrive at an option which is acceptable to all. However, in the end, we can achieve nothing.

Madam President, today, with enough votes, this Bill may be passed but nonetheless, there will be no winner. If passed, especially if Mr CHEUNG Man-kwong's amendment is not endorsed, I believe a lot of people will have a strong aversion. Even if the Bill is passed, will anyone immediately crack a bottle of champagne in celebration? I do not think so because everyone knows that the atmosphere is very tense.

We have recently passed a Bill on landfill charges. Madam President, landfill charges are of course very important to environmental protection, but as opposed to education, I do not think that the two can be brought together for comparison. However, the Secretary may also be aware that the Bill on landfill charges has taken almost 10 years because, upon its passage in 1995, truck drivers blockaded the landfills for two days, resulting in a very serious incident. At that time, the authorities immediately shelved the legislation, and it took seven or eight years before another Bill was formulated. I am not appealing to anyone to besiege anything, but we can see that the issues shelved can be discussed again. Today, we are not telling anyone to besiege some others, but I learned from the television last night that Sheng Kung Hui said it would resort to civil disobedience and the Catholic organizations also said they would prosecute the Government. How many schools in total are they managing? Numerous, Madam President. Why is it that, after so many efforts, we still fail to persuade these major SSBs, telling them that the present arrangements are beneficial to them, beneficial to the parents, beneficial to the students and beneficial to the whole society?

In fact, after all, Madam President, I believe many people harbour a worry that under the sovereignty of China, schools in Hong Kong can no longer continue to teach the things they like independently. Sometimes, I would participate in some forums and hear many people scold the Government unceremoniously. Madam President, they scolded the Government for not mandating the singing of the national anthem, nor raising the national flag. What disgrace is this? I believe there are still others who hope that schools will teach what the authorities — or even Beijing — tell them to teach, or not to let students foster independent thinking to go against the Government. However, Madam President, this is our freedom; this is what "one country, two systems" has assured for us.

The Government's proposal to enact laws on Article 23 of the Basic Law has given rise to objection by many. Secretary Regina IP did her best to support. Of course, Secretary Prof Arthur LI is not Secretary Regina IP. I do not think they are the same kind, or even jackals from the same lair. Therefore, I feel all the more strange as to why Secretary Prof LI seems not to heed the worries so clearly expressed.

You can surely say that all this advanced us is just conspiracy theory. Nonetheless, Madam President, this is no conspiracy theory. Many people in the community hold this view. They have the same feeling, including many of us in The Frontier. Everyone harbours grave concerns towards this Bill. Among them are Christians or Catholics while others are not, but they have all asked this question, "Are we probably doing something to cause many schools to lose their autonomy?"

The Secretary will say 60% of the school managers will be appointed by the SSBs. However, some people say that the placing of several school managers into the schools by the Government can also create big problems. Is this true? I have personally discussed this with the Bishop and some other people, and I think that there will be problems. In particular, Madam President, there are circumstances in which some people do not like to express their ideas, that is, what many Hong Kong people like most in fact is to earn their money and dine out, go to the movies, do some window-shopping after work. When it comes to things like school management, they are not that interested in participating, although some are. We can realize this from the case with owners' corporations. Actually, who is interested in what and who is not interested in what are the people's business. However, I think in whatever aspects, people should learn to put aside their personal benefits and participate more. However, sometimes, the participants are so enthusiastic to the extent that they will cause some people to feel particularly worried. I can only advise the public not to pay attention to which party someone belongs, so long as he has done his best.

Nonetheless, in this regard, we have to give the public some time. For all these years, we can notice that a lot of people have taken to the streets. We feel that civic awareness of the Hong Kong public is strengthening. I hope they will also understand that regardless of whether it is the management committees of owners' corporation or the SMCs, we need to have more people to come out to run, instead of allowing some people who are interested to take up the

positions. Madam President, this is a matter of culture. Does it mean that there can be immediate changes upon the formulation of a piece of legislation? This is why Mr CHEUNG Man-kwong proposed the giving of some room. This room is not too big, just to let the Legislative Council to do something if it considers that the progress is not good. Although the scrutiny process has now come to this final stage, I still hope that the Secretary will change his mind.

As far as this Bill is concerned, the Secretary is the one "in charge" and he does not have to listen to those at his back. However, I hope the Secretary knows that there are things which must be done. No matter what, the Secretary is only a messenger. I hope the Secretary can see the whole picture and realize that there are things which the community will not approve of, and there are things which, despite our support, still attract a lot of criticisms. Madam President, just as Ms Cyd HO and the other Members said, there are in fact many problems in the Bill. I am a bit disappointed with the Secretary because Ms HO mentioned yesterday that out of the many meetings of the Bills Committee, the Secretary had only attended once and stayed for more than an hour. However, Madam President, during that one-odd hour, the impression I got of the Secretary was that he was not well-versed with the contents of the Bill. I have heard people say that the Secretary likes to look at the general direction, but it comes to the details of the Bill, particularly concerning the power of the authorities and such details as how to balance the conflicts of different sides, the Secretary has to grasp them well and cannot just look at the general direction. Therefore, I hope that in future, regardless of whether it is a bills committee or a panel, the Secretary can come to participate more, show more concern, and give us more confidence so as to make us feel that the Secretary will pay attention to all matters, big or small.

In my opinion, at the present stage, the SSBs are of course at daggers drawn, and the community is also getting more and more uncomfortable and worried. If we pass a Bill which will make a lot of people hesitate at this moment, I believe this would create an even greater impact on our education system.

Personally, I am willing to accommodate, although I know many people would like me to oppose all of the amendments. This is the easiest thing to do and I can also find many reasons to oppose all of the amendments. However, I want to make accommodation with each other and pass a framework so that

schools which like to do so can do accordingly. The Secretary is always talking about democracy but I cannot see that in our fight for general election, the Secretary is coming forth to make his comments with the same standard. With regard to democracy for school management, we support the idea. But democracy is pluralistic, why do we have to deny the others of a choice? Why are schools under the Direct Subsidy Scheme given a choice? Why are quality private schools given a choice? If we are to do things so selectively, I believe not only myself, but a lot of people will also be unable to understand and will not accept it. Of course, we are not on the contrary seeking to regulate everyone, but everyone should be given a choice.

I believe the Secretary will surely understand that if something is very good, we should do it together and try our best to encourage. I have said over and again in the Bills Committee that, in my opinion, some schools are in fact performing badly. I have compiled a report in my capacity as Deputy Chairman of the Public Accounts Committee, pointing out that some schools were going too far — they needed not put down their signature in dismissing or appointing teachers, nor did they have to undergo any procedure.

We do not intend to protect these people, but two mistakes do not make one tick. Therefore, I very much hope that the Secretary can wake up to and escape disaster at the last moment during these last few hours so that we can support certain amendments as far as possible. I believe it is impossible to have all the amendments passed. I hope those amendments which have the support of all can be implemented accordingly, but some room must be made available. That is, after a few years, if it is discovered that there are problems in the enforcement of the legislation (There are really problems for if not, will the Legislative Council support the proposing of amendments?), the mechanism now proposed by Mr CHEUNG Man-kwong should be invoked. The Legislative Council should then be allowed to conduct a review and the whole Legislative Council should be involved, rather than being decided by the words of one single person.

To me, we have to reach a compromise under such difficult circumstances, and even if we manage to reach one, we will still be scolded by the public. Some people consider this totally unacceptable. Mr LEUNG Yiu-chung has asked the Secretary to withdraw the Bill. Of course, if the Secretary is willing to do so, I do not think there will be a big problem. However, since we have

made so many efforts — holding 39 meetings, totalling 110 hours — and achieved some progress, we should not waste these efforts. We have adopted an attitude of accommodation in doing things. I am personally prepared to make this commitment, that is, to make available a framework.

Actually, even with this framework, just as Ms Cyd HO said, no matter who is returning to the Legislative Council, this Ordinance should continue to be a matter of concern in the Education Panel in the next term because this is an Ordinance belonging to the colonial era. It contains a lot of extremely harsh provisions which we all should examine. The Secretary needs not fear, there is really a need for examination as some provisions are truly very harsh. However, these are not the making of the Secretary or TUNG Chee-hwa. Yet, it is fine as long as these matters are not mentioned, but once mentioned, many people would like to make them more modern and civilized. Therefore, we will still have many amendments, but I think it is most imperative to send a message to let the public know that there is really a framework. The framework may not be perfect, but we still hope that parents, teachers and alumni can elect someone to join the committee. I am aware that some SSBs do not want them to have a choice. I will try to persuade them to do so.

Finally, I think reluctance is good to nobody. Madam President, having been a Member of the Legislative Council for so many years, I cannot remember which Ordinance was forced through under such a tense atmosphere, a confrontation. Frankly speaking, even passed, it may not be enforced, and the Ordinance on landfill charges is an example. I do not believe the authorities will now say that fine, whether you are going to fight or do whatever, I am going to force my way through. Nor will I believe that Secretary Prof Arthur LI is short of wisdom. Although it is now the final few hours for the scrutiny of the Bill, I think the Secretary can think it over with his wisdom. Of course, there may not be a need to make out a blood path, but the Secretary can give a better explanation, so that we can give more support to the passage of the Bill and the provision of a framework. That said, I am not forcing the Secretary, he can take it up or drop it. However, I will appeal to the Secretary to come to the Legislative Council in future to have a look at the circumstances and what progress the Ordinance has made. I so submit.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, having listened to so many voices against SBM and democracy, it is now time to listen to the voices in support of SBM and democracy.

During this scrutiny of the Bill which has spanned more than a year, the Bills Committee has held a total of 39 meetings and met with 38 different SSBs and representatives of parent-teacher associations as well as other interested members of the community. Their opinions were very diversified, with some supporting the Bill and others opposing. Upon balancing the opinions of the SSBs and those of the members of the community, the DAB considers that the reasons for objection of individual SSBs are not adequate. Meanwhile, since we believe that with the inclusion of stakeholders like parents, teachers and alumni in the SMCs, school management will be made more transparent and accountable, we therefore support the Bill and the Government's amendments.

Individual SSBs which oppose this Bill are concerned that once parent school managers and teacher school managers are elected, some people with ulterior motives will join the IMCs by way of election, unsettling the SMCs. They also point out that these school managers may raise suggestions which are against the school sponsoring beliefs and aspirations, for example, the suggestion to cut down on the number of religious sessions which dovetail with the objects of the SSBs, or bring in sessions of another religion, and so on.

The DAB considers the worries of these SSBs unnecessary and groundless. In fact, parents send their children to a school because they subscribe to its school sponsoring beliefs. Therefore, it seems to be over-worried in making the presumption that parents with different opinions will stir up troubles after joining the SMCs. I have come into contact with some parents who support the Bill. Like the teachers, they too are very rational. They stated that if they were given the opportunity to join the SMC and participate in school management, they could better understand the management and operation of the school. The accusations that they will "upset the management of the school", "abandon the school sponsoring beliefs of the SSBs", and so on, are really "unnecessary".

During the course of discussion in society, I have witnessed a human weakness, that is, mutual suspicion. Before the passage of the Bill and the establishment of IMCs, some SSBs accuse that elected school managers may create havoc in the schools. In actual fact, the implementation of SBM proves that these accusations are made out of suspicions.

Bishop Joseph ZEN stated in a radio programme yesterday morning that if people holding different opinions joined an organization, that organization would not be able to operate normally. I am very disappointed with this comment by the Bishop. An organization or an institution is society in miniature. If a school, as an educational institution, does not accommodate dissidents in its management or a very small minority of elected school managers, how can it teach the students to accommodate different opinions in society? Moreover, those who join the SMCs are no "dissidents", but stakeholders of the school! I remember Mr WONG Sing-chi once said — right now he is not in his seat — in a family, there must be a place for democracy, the torch of learning must be passed on, the children must be taught to be aware of democracy. I think, since democracy can have a place in family, why can it not have a place in schools?

I would also like to quote the *Bible*: "Beareth all things, believeth all things, hopeth all things, endureth all things." These words make me fantasize that between the SSBs and school managers, there can be a cordial and harmonious relationship. First, the SSBs should believe that parents, teachers and alumni elected to join the SMCs all have good intentions. They can tie in with the beliefs of the SSBs and run the schools well. Second, SSBs should take on an accommodating attitude and accept the elected school managers. Third, SSBs should hope that IMCs can surely perfect school management. Fourth, once the SMCs or SSBs come across opinions put forward by some school managers which are difficult to accept, they should also endure and resort to communication and guidance so as to run in the operation. I also believe that if the SSBs can get rid of their suspicions, they can achieve better school management with the elected school managers. In fact, SMCs of some schools have managed to forge a most cordial work relationship.

Some SSBs also oppose the "broad-brush" approach. They oppose the requirement for aided schools to practise the same model of school management, forming IMCs. The DAB considers that it has been more than a decade since the SBM model was proposed, discussed and implemented, but so far, only less than 20% of existing SMCs have seen the participation of parents, teacher representatives and alumni. This reflects that allowing schools to implement their own model is not practicable. Therefore, if laws to the effect of establishing IMCs are not enacted, this most basic school management idea can only be a good wish that can never be realized.

Another reason for individual SSBs to oppose the Bill is that the Bill enables the Government to manage the schools direct, changing the present practice of managing schools through the SSBs, that is, taking away the power of SSBs to control schools. We think that the influence of the SSBs on schools will not be totally removed because through four mechanisms, it can still be ensured that IMCs will not abandon the objects of SSBs and do things in their own way. First, the SSBs can draft the constitution for the SMCs; second, the SMCs can at the most have 60% of the school managers appointed by the SSBs; third, SSBs have the power to replace their school managers; and fourth, the Bill stipulates that IMCs are responsible for formulating the education policy of the schools in accordance with the aspiration and mission in education laid down by the SSBs, therefore, it is groundless for the SSBs opposing the Bill to say that the Bill will make them lose control over the SMCs.

During the course of discussion, the concern of individual SSBs is the right to control schools, while that of parents is whether the transparency of the management of schools aided by taxpayers can be increased. Some parents asked me, "Since the operating expenses of aided schools came from taxpayers, why then did those opposing SSBs say that the schools were "theirs"?" Parents have a point in that thinking because each year, \$38 million of taxpayers' money is spent on each secondary school, while \$22 million is spent on aided primary schools. The DAB believes that liberalizing the framework of school

management and introducing a small number of elected school managers can raise the accountability and transparency of school management.

Some people said that the scrutiny of this Bill involved the redistribution of power, and criticized that the Government hoped to expand its power through this Bill to control education. We all know that power distribution is a zero-sum game, for while one party is given more power, the other may have less. However, if we harbour no prejudice, we will see that the Bill has not conferred greater powers on the Permanent Secretary or the Education and Manpower Bureau. On the contrary, we can see that the power of the Government or the Permanent Secretary has been cut, only that the power of the different stakeholders has been increased. Therefore, regarding this Bill as an act of the Government in taking back power is, in my opinion, another "unnecessary" accusation.

I was most astonished by the 180-degree change in the attitude of Mr CHEUNG Man-kwong towards legislation — from the former radical and extreme attitude to a delaying and conservative one. In 1999-2000, Mr CHEUNG spared no efforts in the Education Panel in demanding the authorities to implement SBM through legislation to ensure compliance by all schools, and opposed the taking of administrative measures to implement SBM. He also opposed the appointment of more than 50% of school managers by SSBs, thinking that this would undermine the accountability of schools. He suggested bringing in more representatives of parents, teachers and alumni. At that time, SSBs already expressed reservations about the relevant proposal, and I believe Mr CHEUNG knew it very well.

However, after the introduction of the Bill, we could see that the legislative proposals are more conservative than what Mr CHEUNG originally thought. In the beginning, I thought Mr CHEUNG might not be satisfied with the excessively small number of parent and teacher representatives in the SMCs and the legislative timetable, but this was not the case. Mr CHEUNG let the preference of a minority SSBs prevail, and even proposed an amendment to the effect that the deadline for aided schools to establish IMCs according to the law be postponed indefinitely. On the issue of enacting laws for SBM, Mr CHEUNG has changed from his former attitude of thinking solely about the interests of parents and teachers to the present attitude of strongly protecting the

interests of the minority SSBs. This big "about turn" has really been an eye-opener to me.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Does any Member wish to speak?

MS AUDREY EU (in Cantonese): Madam President, according to the document provided to us by the Government, the basic principle of school management is to enable major partners, that is, SSBs, school principals, teachers, parents, alumni and individuals to enhance the transparency and accountability of school management through joint participation in decision-making in such areas as school policy, strategic planning, manpower resources, finance and self-evaluation so as to perfect school management and increase the efficiency of teaching.

Madam President, therefore, first of all, I have to emphasize that I subscribe to the principle of SBM. In fact, stakeholders' participation is the general trend. Through the introduction of representatives of teachers, parents and alumni into SMCs, voices from the outside are taken on board, which is conducive to the modernization of school management. However, the spirit of the Bill under discussion today is not only about implementing the principle of SBM, but also about regulating a certain kind of schools and not all schools. Nonetheless, a certain kind of schools can just adopt the single model of IMC, otherwise, the Government can take over these schools.

Madam President, I find the manner in which Secretary Prof LI has tried to promote this Bill most disgusting. He has over and over again used democracy as a banner to mislead the public, making them think that SBM is synonymous with democratization of school governance, thinking that it is pseudo-democracy for Members of the democratic camp to oppose this Bill. When we study the content of the Bill carefully, we would discover first, the IMCs are only introducing this 6:4 ratio of having one teacher, parent and alumni representative respectively; second, SSBs can at the most appoint 60% of the school managers only, accounting for a majority on the SMCs; and third, if the Permanent Secretary of the Education and Manpower Bureau thinks that the school is not being managed well, he can at any time appoint an indefinite number of people

into the SMC. The Government has the power to reject the registration of school managers, or even dismiss the SMC.

We can thus see that the Government still holds the greatest power. However, Madam President, this is not the reason for my opposition. Many Members who have spoken today, including Ms Cyd HO, Mr LEUNG Yiu-chung, Ms Emily LAU and Mr YEUNG Yiu-chung all mentioned the issue of democracy in their speeches. Many Members, especially those of the democratic camp, have said that the Government is not devolving its powers, that this Bill is not heading for genuine democratization, for it fails to be fair and deal out equal treatment.

Madam President, I hold a different perspective as regards these views. I do not think that this is actually an issue of democratization of school governance, nor do I agree that school governance should be discussed in the context of democracy. If the purpose of this Bill is to implement the democratization of school governance, the Bill we are discussing, that is, the Bill introduced by the Secretary, is only the first step. This is because in future, the authorities should all the more increase gradually the ratio of parents, teachers and alumni in the SMC until ultimately, student representatives are included, just as in the case of Articles 45 and 68 of the Basic Law, with all members of the SMC being elected. Just consider, what will a school become? If you say democratization should start with the present 6:4 ratio proposed by the Government, is this not the same as the "pseudo-democracy" described by the Secretary instead of genuine democracy? If it is genuine democracy, why is the ratio standing at only 6:4? Will we in future head towards full democracy?

Madam President, therefore, as a Member who supports democracy and sees education very importantly, I oppose the citing of democracy as a reason by the Secretary and the Government in introducing this Bill. Sponsoring schools and governing society are two different things. First, the unique beliefs of SSBs may not suit the elected school managers; and second, schools should concentrate on teaching, and it is unnecessary to balance the interests of all levels through democratic election. It is the latter which is democratization. This is an ideal pursued by society, not one which SSBs should support. This is not a

case about whether or not it is open, transparent, or whether there is participation of all stakeholders. This can utterly not be called democratization.

Of course, Madam President, I do think that it is necessary to strengthen the supervision of school governance. But we should not make it mandatory to adopt a standard management model. For example, the report of the Education and Manpower Bureau mentioned a two-tier framework, with the lower tier allowing the participation of parents, teachers and alumni to take care of some daily operations. However, the most important policy-making is still reserved for the organization at the top tier — be it the SSB or the SMC — to make decisions regarding some personnel matters or macro ideas. Madam President, why is this model impossible? Why must this single model now proposed by the Secretary be implemented? Madam President, even if this method now proposed by the Government is the best, even if we all accept that this is the best framework, what the SSBs are now practising is still a proven option.

From the angle of legislation, unless the act concerned is harmful to society, otherwise, we should as far as possible refrain from legislating to effect regulation. Just as Ms Cyd HO said, the legislative intent is not to govern people to make them do a good deed every day. The point of the whole debate is whether it is necessary to force certain schools to adopt the school management model which the Government thinks is better, and to establish a unique single model for certain schools. Madam President, I personally consider that the Legislative Council only has to make laws, establish this framework, and let the SSBs make their own choice. However, the Government opposes this, sharing the views as expressed by Mr YEUNG Yiu-chung in his speech earlier. He said we had given the SSBs a decade to make a choice, and up to now, only 20% have adopted this model. Therefore, the Government said if the SSBs were allowed to make their own choice, the proposed option might never be implemented. Madam President, that said, this is by no means a good reason for enacting laws to make it mandatory for SSBs to adopt the only model which the authorities think is better.

Good wine needs no bush. If upon the establishment of IMCs, schools can remould themselves and make remarkable achievements, securing praises from parents, teachers and alumni, and attracting student enrolment, the other

SSBs will naturally follow suit. This is a natural market law. If the authorities have to implement SBM, I think the best and most proper way is to do it systematically and patiently and bring about reforms through market forces, rather than forcing it through like what it is doing now. This will compromise the partnership relationship among the authorities and many people in the education sector, the SSBs, parents and teachers.

This high-handed approach adopted by the Government to forcefully implement the legislation on SBM has not secured the blessing of many SSBs. It has displayed an attitude of "I am footing the bill, therefore, I naturally have the power to govern you", again playing its tactic of "pulling one camp to pitch against the other". It has mobilized many parents and various organizations to support the Government, hoping to suppress some dissenting voices through public opinions. Madam President, the whole promotion process has caused me grave concerns. Education is the concern of all Hong Kong people and every parent. Education has an impact on our next generation and the future of Hong Kong. The disputes, or even the hatred, created by the Bill now being enacted and implemented are sufficient to render our mutual trust totally non-existent. Let me quote the words said earlier by Mr YEUNG Yiu-chung. He said he had witnessed a lot of suspicions. How then can we co-operate sincerely in future to educate our next generation?

The Bill stipulates that by 2010, all aided schools should mandatorily implement this single model of SBM. Mr CHEUNG Man-kwong has thus proposed an amendment, hoping that the Legislative Council be enabled to decide by way of resolution in 2008 whether or not to implement this as scheduled, or to further postpone the time for implementation. I think this is after all a compromise. First, the Legislative Council will have the opportunity to monitor the implementation of the Ordinance and make a decision after listening to the views of all parties; and second, under the mechanism of separate voting, it is very difficult for this resolution to be passed by the Legislative Council. In other words, unless there are really big problems in the implementation of the SBM model to the extent that all sectors consider its scrapping necessary, the Government is already in an invincible position.

Thus, Mr CHEUNG has for the good of the Government extended his friendly hand. Actually, Ms Emily LAU's speech just now served the same

purpose. I also hope that the Government can appreciate all this and grasp this opportunity to forge consensus.

Madam President, lastly, I would like to discuss whether the Bill is in violation of the Basic Law, as considered by some SSBs. This has to do with Article 141 of the Basic Law. It stipulates that religious organizations may, according to their previous practice, continue to run schools. In fact, the crux of the matter lies in the words "previous practice". What is meant by "previous practice"? Has the Bill replaced the previous practice of religious organizations with a new, only and single way? The Government considers that Article 136 of the Basic Law stipulates that the SAR Government can formulate policies on the improvement of education on its own, therefore, it considers that Article 136 can override Article 141. Since it is of the opinion that this Ordinance on school-based management is meant to develop and improve education, it is thus not in violation of Article 141.

Madam President, in my opinion, Articles 136 and 141 are both provisions of the Basic Law, they should have the same status, so we cannot say one overrides the other. The Government can certainly propose in accordance with Article 136 certain school sponsoring method which it considers is better, but this method cannot replace the previous practice. This school sponsoring method can only co-exist with the other previous practices, providing people with more choices. I did ask the Government to make available some documents to explain what "previous practice" means. Has this school sponsoring method proposed by the Government replaced, influenced or changed the previous practice? Madam President, I can only say that within such a short time, the Government has really provided some information, but such information is actually not adequate. At the present stage, I am unable to decide whether this Bill will run counter to the previous practice and Article 141 of the Basic Law.

Therefore, based on the aforesaid reasons, instead of passing this Bill hastily now, I think we may as well shelve it temporarily. I hope the Secretary, perhaps after thinking twice, can adopt Mr CHEUNG's compromise option. I believe under the present tense situation, this will bring the people and society to a consensus. To education, this is also a very substantial contribution. We can take this opportunity to also consider many shortcomings left behind in the existing original Education Ordinance, and think about amending them at the

same time or soon. If the Government can do so, it is really doing a great service to the future of Hong Kong and its next generation.

With these remarks, Madam President, I oppose the Second Reading of the Bill.

MR TOMMY CHEUNG (in Cantonese): Madam President, the Government has implemented SBM in government schools for more than a decade and has always encouraged participation from more schools. Since the publication of the Report No. 7 by the Education Commission many years ago, many Members of the Legislative Council who are concerned about the development of education have strongly criticized the Government and called for the implementation of SBM in schools expeditiously. I remember that Dr YEUNG Sum and Mr CHEUNG Man-kwong have vigorously urged the Government and the then Secretary for Education and Manpower, Mrs Fanny LAW, to implement SBM expeditiously.

But when the Education (Amendment) Bill 2002 was tabled before the Legislative Council, colleagues had very strong views about it. We, therefore, had spent two years on the deliberations on this Bill, and we still attended a meeting even this Tuesday.

The spirit of the Bill is to promote the principle of SBM. Through the establishment of IMCs, the civil liability of school managers will be waived, and stakeholders such as parents, teachers and alumni will be encouraged to participate in decision making. This will enhance the transparency and accountability of school governance, enabling schools to incorporate different opinions and enjoy greater autonomy, thereby promoting reforms of the education system. The Liberal Party considers that this is the general trend and believes that all sectors of the community support the spirit of this Bill.

During the deliberations on the Bill, SSBs, parents, teachers, and so on, actively expressed their views to the Legislative Council. I also met with their representatives on other occasions. Some SSBs particularly expressed the concern that they might be stripped of their powers in school management after the implementation of SBM and the establishment of IMCs, thus making it

impossible for them to continuously carry out the vision and mission of their schools.

The Catholic Diocese of Hong Kong and Hong Kong Sheng Kung Hui were among organizations which had greater reservations about the Bill. Established in Hong Kong for over a century, these organizations have made enormous contribution by nurturing talents for society through the provision of education. Their experience is an important lecture to other educationalists.

As far as the Liberal Party understands it, the SSBs were worried that the Bill, if enacted, might deprive them of their powers in school management. But when scrutinizing the Bill, we had to balance the demands of various sectors in the community. So, we hoped that the major SSBs in opposition to the Bill could participate in the deliberations on the Bill to better the provisions of the Bill. Unfortunately, they had only raised objection to the Bill without actively giving us their views, and this is utterly disappointing to me.

The Liberal Party believes the new legislation will not deprive the SSBs of the power to manage their schools. First, the Bill not only empowers the SSB to decide on the vision of the school and give general directions to the IMC in the formulation of education policies, but also allows it to maintain full control over the use of its funds and assets. The SSB will also be responsible for drafting the IMC constitution and specify therein the procedures for nomination and cancellation of registration of SSB managers. Second, the SSB can appoint representatives to take up as much as 60% of IMC membership, and it can also appoint an independent member. So, under the new legislation, the SSB will still assume a leading role in the SMC and exert significant influence on it. Third, if a SSB manager does not work in accordance with the directions given by the SSB, the SSB may exercise the statutory powers conferred on it to cancel the registration of the relevant manager and nominate a replacement.

Yet, some SSBs were still worried about whether the 60% representation in the IMC could guarantee their influence on the school. They have expressed this concern. But I can draw an analogy between this and doing business: Some people like doing business as a sole proprietorship and do everything by themselves; whether he will make a profit or suffer a loss is entirely his own business and he is the only person who makes decisions. It means that the decision-making authority is vested in one person, which guarantees the

efficiency of a business. When a loss is incurred, that is my own money; when a profit is made, the money will be going into my own pocket. Others may like partnership; as long as I hold more shares than you do, say, when I have 51% and you have 49%, things are still in my control, and better still, the decision rests with me. In that case, the decision-making authority is still vested in one person. It is like investing on me, and you do not have to care about anything else. When I make a profit, you will have your share and of course, mine will be bigger. Some people are very successful, for they have been able to raise funds in the market by going public. The decision-makers of many listed companies only have not more than 40% of the shares, but they have great decision-making powers and so, they do not mind about the number of their shares. So, in different modes of business operation, different people will adopt different attitudes. I do appreciate the view of the SSBs. The major SSBs consider that if their authority falls short of 100%, and even though it is 60% or over 60%, effective management would still be impossible, and their vision or mission in the provision of education would hence be affected. This, we in the Liberal Party, consider understandable.

But in our view, whether school management will run smoothly or otherwise actually depends on whether or not the SSB can maintain close communication with such stakeholders as teachers, parents and alumni. We believe that parents who like the teachers of a school and who are willing to put their children in this school will share the aspirations and vision of the school. On this premise, if everyone adopts an open attitude, there should not be any divergence that the IMC will find impossible to resolve. The Bill as amended can balance the interests of all sectors and enable all sides to feel at ease in participating in SBM. We will expound the details in the debate later.

Some parents and teachers were worried that the establishment of IMCs would add to their legal liabilities. The Liberal Party thinks that they do not have to worry about this, for the provisions of the Bill have already protected the managers. If they truly act in good faith without fraud or malice, they will not incur any legal liabilities or face civil proceedings for any act of the IMC. If a manager acts in bad faith, for example, if the manager is proven to have stolen the properties of the IMC, he would have committed a criminal offence and of course, he would have to shoulder personal liabilities. But this is not a direct result of the establishment of IMCs.

Another key issue considered during the deliberations on the Bill was whether the SSBs, the school, teachers and parents have sufficient time to adapt to the changes to be introduced by the legislation. The Liberal Party considers it necessary to set an exact date for the implementation of SBM. The Administration has suggested earlier that if Members of the Legislative Council identify problems with the implementation of the Bill in 2008, the Government will defer the deadline for all subsidized schools to establish an IMC for two years from 2010 to 2012. As there are seven to eight years from now to 2012, we believe various sectors will have ample time for adaptation, transition and preparation. This arrangement will help allay the concern about hasty implementation.

Colleagues also asked why Direct Subsidy Scheme (DSS) schools can be excluded from the Bill. I had expressed my personal views on this during the deliberations on the Bill, and I had also declared that I am a manager of a DDS school. As we were not converted to a DDS school before the effective date, this in fact has nothing to do with my school.

Yet, I wish to stress that the provision of funds to DSS schools is calculated on the student intake as well as the number of classes. The management of a DSS school will, to a very large extent, affect the popularity of the school. In other words, the users, such as parents, will have greater influence on DSS schools, because they can cast a vote with their feet. So, in terms of their nature, DSS schools are entirely different from the general aided schools which are required to establish IMCs under the Bill. Moreover, as DSS schools are still at an initial stage of development, they should be allowed greater flexibility in deciding whether or not to set up IMCs, in order not to impede the diversified development of the education system. In fact, when encouraging the conversion of schools to DSS schools, the Government has promised the SSBs that they do not necessarily have to set up IMCs.

Moreover, as pointed out by some SSBs and by a number of Honourable colleagues, including Ms Audrey EU, earlier, requiring the establishment of IMCs by the SSBs of all aided schools is a violation of Article 141 para 3 of the Basic Law which provides that "Religious organizations may, according to their previous practice, continue to run" schools.

Like Ms Audrey EU, the Liberal Party did not have much time to look at this. But we believe that under the principle in this Article about running

schools according to previous practice, there is still room for the authorities to improve the model of school sponsoring, in order to cope with the development of society.

Furthermore, in considering the relationship between the Bill and the Basic Law, we should not look at Article 141 only. We should also make reference to other Basic Law provisions on the education system. Article 136 provides that "On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education", and the policy areas specified in this provision include "policies regarding the educational system and its administration, the language of instruction, the allocation of funds.....", and it is also provided that "Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region". The Liberal Party considers that the proposals in the Bill are within the scope of the development of education under Article 136.

In fact, there are also other provisions in the Basic Law which carry references to the systems before the reunification. They include Article 19 which provides that ".....the legal system.....previously in force in Hong Kong shall be maintained" by the Court; and Article 129 which provides that the Government ".....shall continue the previous system of civil aviation management in Hong Kong". The issues involved in these provisions seem to be more specific than the areas specified under Article 141 of the Basic Law. But does it mean that the Basic Law allows no room for changes or improvement according to the previous legal system and system of civil aviation? The Liberal Party believes a rigid interpretation of these provisions of principle in the Basic Law is not the original intent of the drafting of the Basic Law. We also believe the authorities will not do anything in violation of the Basic Law in order to implement SBM.

Openness in school administration and more balanced participation are the general trends in the development of education in Hong Kong. To this end, it is necessary to put in place a robust, flexible statutory governance framework with clearly defined powers and responsibilities.

Finally, Madam President, I wish to talk about my feelings about this Bill. During the first year when I joined the Legislative Council, I participated in the

deliberations on the Bill on the regulation of karaoke establishments. We had 29 meetings, and each of the meetings was very long. But members of the industry whom I represent were there with us from the first minute until the last minute of our meetings. After the meetings, I had to spend a lot of time explaining to them all the developments because they might not catch everything sitting at the back. That was very time-consuming. I had never imagined that by this last day of my first term as a Member of the Legislative Council, over 30 meetings had been held on this Bill before us, and I do not even remember the exact number of meetings. My feeling is that this Bill is far from perfect and involves some very old regulations and so, we had to do a lot of patch-up work. That is why we have proposed more than 40 or even more than 50 amendments.

Insofar as this Bill is concerned, my view is different from Members in the sense that I have never thought that this Bill has to do with principles of democracy or its amendments involve the promotion of democracy. I only think that this Bill enables stakeholders of schools to participate in SBM. I am a manager of a school, and I am the Chairman of its fund-raising committee. On every fund-raising occasion, I invariably have to approach parents, teachers and alumni for donations. I, therefore, consider it only natural and reasonable for them to join the SMC. But much to my regret, this Bill has ruptured the relationship between the Education and Manpower Bureau and many SSBs. This is not a good thing to education in Hong Kong in the future and to the future of our children. So, whether or not this Bill can be passed today (I heard Mr CHEUNG Man-kwong say earlier that the Bill is likely to pass today), I hope the Secretary will work hard (not only during these several hours here to get this Bill through, but also after the enactment of the Bill today) to solve the problems with the SSBs as far as possible. It is because, whether by the SSBs or the Secretary, these problems must be solved before there will be hope for education in Hong Kong.

Madam President, I so submit.

PRESIDENT (in Cantonese): Ms Audrey EU, do you wish to elucidate your earlier speech?

MS AUDREY EU (in Cantonese): Madam President, I would like to make a clarification, because Mr Tommy CHEUNG mentioned me in his speech just

now. He said that, like me, Audrey EU, he had not had enough time to go over the Bill. I wish to clarify that I did not say so. I did not say that I had not had enough time to go over the Bill. I just said that, regarding Article 141 of the Basic Law, I had not had enough information; therefore, I could not make a decision at the present stage. I had never said that I did not have enough time. Thank you, Madam President.

MR IP KWOK-HIM (in Cantonese): Madam President, Mr YEUNG Yiu-chung has already put forth clearly the views of the DAB on the Bills. I would like to express the queries of the DAB, members of the community and parents regarding the opinions of the Democratic Party and Mr CHEUNG Man-kwong.

During the discussions on the Bill relating to SBM, the public and the media have all along been concerned about the content of provisions, and the comments by Bishop ZEN, sponsoring bodies and parents. However, they overlook the change of stance of the Democratic Party. I would like to share with Members, how the Democratic Party has changed its stance from pro-parents and pro-teachers to pro-sponsoring bodies. Their change helps me understand fully Mr CHEUNG Man-kwong's favourite sayings, "letting the me of today defeating the me of yesterday".

In 2001, in a press release issued by the Democratic Party in response to the SBM consultation paper, it is stated that, I hereby quote, to this effect "The Democratic Party all along demands for the democratization and enhancement in transparency of school-based management, thus the Democratic Party always supports the spirit of enhancing accountability and transparency of school under the school-based management policy, as well as the proposal for the opening up of school management structure to parents, teachers and members of the community."

In respect of the composition of school management committees, it is stated in the above article that, I quote again, to this effect "The current proposal of the Advisory Committee on School-based Management suggested that managers nominated by school sponsoring bodies may represent 60% of the total number of managers. The Democratic Party considers such a percentage too high, and proposes the reduction of the percentage to 50%. The Party considers the reduced percentage adequate, and may alleviate the concerns of

school sponsoring bodies in identifying enough candidates as managers." (end of quote) We can see that the proposal is in line with the arrangement of enabling more parent and teacher representatives to join the SMCs.

In fact, the Democratic Party is the trailblazer on the composition of SMCs. The Party not only supports the participation of parents, teachers and members of the community in SMCs, but also proposes the inclusion of two student representatives, which the Party considers consistent with the basic concept of student-based teaching.

Mr CHEUNG Man-kwong, being the President of the Hong Kong Professional Teachers' Union (HKPTU), joined in the Bills Committee as a representative of the Democratic Party. We can imagine that the stance of the HKPTU and the Democratic Party should be very similar, or even the identical. In 2000, the HKPTU publicized a representation stating its stance on SBM. It is stated that, I quote, to this effect "Taxpayers have undertaken a profound portion of the education funding through the Government. The public are thus entitled to requiring the management of schools to head in the direction of more open and professional development." (end of quote) Against this background, the HKPTU proposed that two managers in the SMCs should be elected by teachers and parents, while the number of managers recommended by SSBs could amount to 50% of the total number of managers. In respect of transitional arrangement, the HKPTU suggested that, I quote, to this effect "Upon the enactment of the new legislation, all aided schools in the territory should restructure their school management committees in compliance with the new model. If schools encounter actual difficulties the Education Department may, and only under this circumstance, exercise its discretion to exempt the implementation of the relevant measures within the three-year transitional period. However, the three-year transitional period absolutely should not be used as an excuse by schools for delaying the implementation".

Members of the Democratic Party also put forth a similar opinion in 2000 at a meeting of the Panel on Education. They demanded that SBM be developed in the direction of greater democracy and openness, parents and teachers representatives be included in SMCs, and the development of SBM be

speeded up. In a media interview, Mr CHEUNG even likened SMCs to secret societies, and demanded that transparency of SMCs be enhanced.

These opinions of the Democratic Party are in fact some basic principles of SBM. However, today, I do not see the Democratic Party upholding these principles anymore. They have changed. They no longer uphold the interest of parents, teachers and students. SSBs have now become their gravest concern. They worry about the difficulties these SSBs may encounter after the passage of the Bill. In order to protect them, the Party even resorts to creating a gap in the Bill to enable Members of the Legislative Council to extend by resolution the time limit for the establishment of IMCs to 10 years, and even 20 years. As such, Mr CHEUNG's amendment is not a "safety valve" as he claimed earlier, but a "funnel" that actually allows a small number of SSBs to slip through, refraining from establishing IMCs.

Just now, many Members opposing the Bill have stated their views and conclusions, and I have the most profound feelings about all this. As I have been working in the education sector for some 20 to 30 years, I feel that the participation of more students, even alumni, and parents in school governance definitely has merits. This may facilitate the schools concerned to incorporate different views and make improvement accordingly. Why do they have to worry about this? I hope that more schools will be able to incorporate views extensively in respect of their management.

I consider, in an attempt to curry favour with a minority of SSBs, the Democratic Party has betrayed parents, teachers and students, and deceived the people of Hong Kong. The Democratic Party should give a clear account to society and public on this.

Madam President, I so submit.

MR ALBERT CHAN (in Cantonese): Madam President, it sounded a bit unsettling to me when I heard Mr IP Kwok-him accuse the Democratic Party of changing its position. When it comes to changing one's position, the DAB is notorious for "saying one thing and doing another", one prominent example

being its wavering position during the discussion on constitutional reform. Despite its high profile in supporting the introduction of universal suffrage in 2007 and 2008, it "chickened out" immediately when the Central Authorities drew a conclusion. Another example is related to Route 10. In his pamphlets distributed to Tin Shui Wai residents, Mr TAM Yiu-chung indicated his support for the construction of Route 10, but he cast an opposition vote when the project was voted in this Council. When it comes to the practice of "saying one thing and doing another", no political parties in this Chamber can surpass the DAB. Therefore, when I heard Mr IP accuse others of changing their position, I really hoped he himself could reflect on his own political party's constantly wavering attitude.

Madam President, our debate today is mainly on the Education (Amendment) Bill 2002 (the Bill). Not being a member of the Bills Committee, I have not paid specific attention to the details of the relevant provisions. However, I learned from the news reports earlier that there were strong views from various parties on the impacts of the Bill on schools — both SSBs and various parties have reacted strongly to the Bill. I find it most impressive that senior government officials — particularly our Secretary — have repeatedly indicated on public occasions that the Government is merely trying to run schools with a democratic approach. I was like being awakened from a dream after hearing the Secretary's words and it really surprised me that TUNG Chee-hwa's administrative officials were so supportive of democracy. I just cannot help thinking this question. Why could the Government have denied all the people of Hong Kong the opportunity to pursue democracy through the introduction of universal suffrage in 2007 and 2008 on the one hand and suddenly been so kind as to offer Hong Kong a bit of democracy today in 2004 on the other? This question has naturally come to my mind: What is the Government's motive or plot? This is because I will definitely not believe TUNG Chee-hwa, given his mode of thinking and his philosophy of governance for the past seven years, will give Hong Kong people any opportunities to enjoy democracy or pursue democratic development. To say that TUNG Chee-hwa supports democracy is utterly ridiculous.

During a discussion with the Secretary in the Ante-Chamber several days ago, I suggested that the Government draw reference from the systems practised in the United States and Canada in electing school boards through geographical direct elections, given the Government's enormous support for democratization

of school administration. Such a system has been in force in the United States and Canada for years, with some places having practised it for nearly two centuries. Under this system, each district will elect its own public opinion representatives to form a school board to be responsible for formulating policies and principles for all the schools within the district and dealing with recruitment. No system can indeed be more democratic than this one. I would like to suggest the Secretary and the officials led by TUNG Chee-hwa not to half-bake the cake by giving so little if they are really so supportive of democracy. The so-called democratization of school management is indeed neither fish nor fowl. It seems that the Secretary is reluctant to take up my challenge. He should have withdrawn the Bill should he accept my challenge. If he truly wants a democratization of school management, he should refer to other countries in implementing full democratization because his approach now is really ridiculous.

Though I am not a member of the Bills Committee, a number of members have explained to me that the Permanent Secretary would be given enormous powers by the Bill, and I find this extremely ridiculous. What kind of system is it if a SMC, merely a small democratic regime to deal with the management and policies of a school, has to be controlled and determined by the Permanent Secretary, who carries no element of democracy? Why should a democratic system be handed to the Permanent Secretary, who is completely devoid of democracy, for authoritative administration? This is the reason for my growing feeling that there is some sort of conspiracy behind all this. It has recently been noted that religious bodies, particularly Catholic organizations, have put up the strongest opposition to the Bill. Generally speaking, we can find by looking up the history of the development of the Communist Party of China that Communist leaders reacted in a particularly sensitive manner to many non-governmental organizations, particularly religious ones. They would impose a lot of regulations and control on these religious bodies to prevent them from expanding their influence in society or at the grass-roots level.

Madam President, though it is very difficult to prove this conspiracy theory, I really have such a feeling. This is because some sponsoring bodies have operated for more than a century, and they have great ideals. Moreover, it has been proven by both the facts and history that they have made enormous contribution to Hong Kong society. Why does the Government still insist on implementing a so-called democratic system despite all the strong opposition from sponsoring bodies? I hope the Secretary can respond to the conspiracy

theory advanced by me later on and explain to us his arguments to negate my theory.

Given that such a great number of organizations have opinions and the topic is so controversial, I conducted a survey in New Territories East last month by writing to all sponsoring bodies or schools in the district. It ended up that I received 105 replies, with only 20 expressing approval of the Bill, 70 expressing disapproval, 10 opting for abstention, and five remaining neutral or having no comments. In other words, the ratio of approval and disapproval is 2:7. Although this policy has been praised by the Government to be so ideal and lofty, a large proportion of the affected organizations have expressed disapproval. So, why does the Government still insist on pushing the policy forward despite the opposition? The Hong Kong Government is now operating like a semi-autocratic regime; it will win ultimately because of the support from so many royalists. However, to the majority public, the Government is like a tyrant. Despite its victory, it has won merely votes, not the hearts of the people. This is similar to what happened when the Government tried to push through the legislation on Article 23 of the Basic Law. The Liberal Party was forced to "make a U-turn" after 500 000 people had taken to the streets, and the proposal to enact laws on Article 23 was eventually thwarted. The Bill now before us might probably be an invisible version of the Article 23 legislation, or it in an education context. The existence of a semi-invisible Article 23 in our education system will probably cause an enormous negative impact on our schools, or adverse impacts on the objects and goals of SSBs.

As such, Mr Secretary, I feel that you had better spend more time convincing the SSBs since you have described the Bill as so great and so good. There must be something wrong with what you said if you blamed them for failing to listen to you in a rational manner. If even the SSBs cannot accept this Bill, which is described by you to be such a lofty ideal, I am afraid what you said is totally wrong or logically fallacious. In other words, your words are inconsistent with the truth. This is the reason for SSBs not accepting it. If you describe the resistance put up by the SSBs as irrational, you are actually accusing these SSBs of being problematic in terms of quality. Given that our children are being educated in the schools managed by these SSBs, it means that our children are receiving irrational guidance. In that case, the entire education system will collapse. Therefore, whatever solutions are found, the Secretary will definitely not be acting rationally should he insist on pushing through the Bill. This is

definitely not the expected behaviour of a government which is rational, which respects public opinions or the principles of democracy.

Mr CHEUNG Man-kwong just raised the point that the Bill should be able to pass today because the Government has secured enough votes. I find it even more frightening when I look at the number of votes. This is because the votes will basically come from the DAB and the royalists, plus the overwhelming support from pro-government Members. All these point back to the conspiracy theory raised by me at the beginning of my speech. Why did Members from the democratic camp and pro-democracy Members oppose this Bill proposed by the Government in such a lopsided manner? Why organizations, political parties and Members supporting and accepting no universal suffrage in 2007 and 2008 have been and are still so supportive of this Bill proposed by the Government? There are so many things that are self-evident. Basically, the most likely reason for many of the problems hidden behind is that they cannot be exposed or they are not democratic. Madam President, I will vote in opposition of the Bill at Second Reading. I oppose the Second Reading of the entire Bill.

Thank you, Madam President.

MR LEE CHEUK-YAN (in Cantonese): Madam President, many speeches delivered earlier focus on whether the Bill itself is an attempt to democratize school administration. In fact, the most disgusting part of the whole process is, the Government said right at the very beginning that they were bewildered why the pro-democracy camp would oppose democracy. And eventually it even makes Mr YEUNG Yiu-chung of the DAB make this remark with a grin, "Show time for us today — we are supporting democracy." I think all the people in Hong Kong cannot help feeling amazed. Why has it come to this: The DAB says it supports democracy, whereas the pro-democracy camp says it opposes democracy? What is the crux of the matter?

I hope Hong Kong people can realize clearly that, just as many Members said earlier, the Bill itself is actually not related to the democratization of school administration. And the second major issue is, we are discussing education — the cause of education. The discussion is about a very important policy on the education of our next generation. We are in fact not discussing democracy.

Please take a look at the text of the Bill, and you will realize that the whole Bill is not a bill on democratization. If you can take a closer look, you can see that the Bill seeks to do two things. First, it is implementing a centralized system of democracy. How can a centralized system of democracy be implemented? Under the dictatorial and autocratic rule of the Government, all the powers of school administration will be centralized in the hands of the Government, that is, in the hands of King Arthur. It is King Arthur who shall hold all the powers, and then he will go ahead to reduce or remove the powers of SSBs. Is this democratization or centralization of powers?

Of course, it may be unfair for me to say that this is centralization of powers, because such a practice was there in the past. The centralization of powers has all along existed. It is not true to say that the Government is proceeding with democratization. Ultimately, the Government is unwilling to devolve more power to the schools, and it still wants to centralize powers. If the Government really wants to introduce democratization, should it not devolve more powers? However, this is not the case in reality. Let me quote an obvious example. I recall clearly that on one occasion, when the Secretary came to the Legislative Council, and that was the only time I had asked the Secretary a question: In his opinion, how on earth have we delayed the work? What kind of business we should not discuss? I can still remember the reply of the Secretary very clearly, "On that day, you had spent so much time on discussing 'fit and proper', why?" This further proved that the Secretary did not understand the progress of the Bills Committee, and this also proved that he was not well-versed in the provisions of the Bill. He did not even understand why the phrase "fit and proper" had stirred up such a major controversy.

In fact, it is very simple, that is, it is just the issue of whether the Government wants to centralize powers. If the parents and the teachers have elected their representatives, we want to ask: Why should the power eventually go to the Permanent Secretary who can decide subjectively whether the teacher representatives or the parent representatives are fit and proper? Who should be given the power of making this decision? It is the Permanent Secretary for Education and Manpower (PSEM). Who can exercise this power? It is the PSEM again. If he feels that the elected parents or teachers are not fit and proper, then he may not let such elects join the SMCs. This is the issue we had been arguing, but the Secretary said he did not understand what we were arguing

about. Well, that was what we had been arguing about. Come back now to this question. Has the Government gone too far in the centralization of powers?

Yesterday, Ms Cyd HO also mentioned another example very articulately, that is, the evident example of FUNG Ka-keung. Obviously he had been elected, but the Government did have the power to say that he was just offered a temporary conditional appointment. So all the powers are in the hands of the Government. What exactly had FUNG Ka-keung done? He had just taken part in some social activities, one of which was a more controversial activity, namely, the participation in an illegal assembly. However, we have always criticized the Public Order Ordinance for violating human rights. What he had done was just to exercise his own human rights to indicate his stance. But he was prosecuted by the Government, and then the Government said that this man was not fit and proper. That is all for his problem. In the end, we can see that the Government has fully centralized powers.

The second major problem with the Bill on school-based management (SBM) is: It seems that we are promoting an independence movement for the schools. On that day, I had also argued with Mr Gilbert MO, the Deputy Law Draftsman, on Article 141 of the Basic Law. The entire Article 141 of the Basic Law aims at protecting the SSBs in such a way that they can continue to run their schools according to their previous practice. What is their previous practice? (I think their previous practice has now been ruined.) The article stipulates very clearly that all SSBs may run their schools according to their previous practice. But now, this is no longer valid because we have promoted the independence of the schools. Now all the schools have become independent bodies corporate; they have become completely independent now. Of course, the Government may say that the SSBs still have the power to appoint 60% of school managers. However, even if they have the power to appoint 60% of school managers, still the previous practice has been altered. In the past, the schools were not independent bodies corporate, but now they are independent. Are we saying that, in effect, we can strive for independence under "one country, two systems"? Can we establish an independent political entity? All along, ZHU Yucheng has been saying that this is out of the question. No one in the Government intends to do that, nor anyone in Hong Kong wants to do that. However, now, in the schools, some independent entities have come into existence. Is this not a violation of the previous practice?

In fact, what will be the outcome of the whole package of proposals? It is the direct intervention by the Government in the schools. The Government can govern the schools by dividing the different stakeholders and this is done in a way bypassing the SSBs. The Government shall bypass the SSBs and it shall have direct access to the schools. In the end, it will make the SSBs feel that, after making all the hard effort of bringing up the child, somebody is going to take it away. It is as simple as that. Taking a retrospective perspective of the whole issue, is it the intention of the Government to make way for the independence of the schools, so as to bypass the SSBs?

On the democratization of school administration, just as Ms Audrey EU said earlier, if the objective is really to democratize school administration, why do we not invite the students to participate as well? Or in future, why do we not let the parents and teachers to run the schools completely? Then it will be real democratization. May I ask: Is this really the intention of the Government? But the answer is in the negative. Therefore, do not describe the whole incident as a democratization process. The incident itself is an attempt by the Government to continue centralizing powers, and then it will next proceed to bypass the SSBs.

Although the issue is labelled by such a nice objective, that is, to democratize school administration, many Members have put forward the criticism so as to query why DSS schools are not required to implement this. The Government has kept saying that the parents of such schools are already given a choice. In that case, are we saying that parents of aided schools managed by SSBs are given no choice? Each year, many parents have to make their first choice, second choice, third choice, and so on. Is the Government saying that those most preferred schools in the eyes of most parents do not have to implement SBM? The answer is in the negative. At the moment, even those schools most sought after by parents also have to implement SBM. May we ask what is the rationale behind this? No matter their children are going to DSS schools or aided schools, actually all parents do have an a choice. The difference just lies in the fact that parents use money to make their choice in sending their children to DSS schools because they have to pay more, whereas parents of students in aided schools do not have to pay the fees. It is as simple as that, and that is where the difference lies. Does the Government think that the parents should be given any choice? By the Government's logic, then all those schools not chosen by parents must adopt SBM, and this Bill can be

implemented in all those schools not chosen by parent. But under the present circumstances, this is not the case.

In fact, what will happen eventually? I have heard some schools as saying that, in order to avoid adopting SBM, they will opt for conversion into DSS schools. As once the schools have changed to this status, they will no longer be subject to the restrictions imposed by the Bill, so does the Government want to make more schools to become DSS schools? As the Government allows DSS schools to be exempted from the regulation of the Bill, does it hope to make more aided schools convert into DSS schools? Does it intend to force them to take to this path? If the Government says that this is not its intention, why are DSS schools not subject to such regulation? I strongly believe in one thing, that is, the Government had promised DSS schools that they were not required to implement this. This is because the Government fears that, if DSS schools are required to comply with the requirements in this matter, they will revert to aided schools. Is this what actually has taken place?

I have said earlier that the whole issue is not a discussion on democratization. SBM is actually something very simple. It is something we will not oppose because when it involves the participation of parents and teachers, no one will possibly oppose it. What we oppose is the "across-the-board" treatment. We oppose the Government's high-handed approach to force SSBs into submission. That is what our objection is all about.

Just now, Mr IP Kwok-him of the DAB asked: Which side actually has the Democratic Party chosen to support? Has the Democratic Party switched its support from the side of teachers and parents to that of SSBs? In fact, I feel that this is not true. I believe none of the Members present today is taking sides with parents, teachers or the SSBs. We take only one side, namely, education. What is good for our education? What is bad for our education? As we consider the issue, this is our only stance, instead of considering it from the perspective of any organizations or any stakeholders. If we ask Hong Kong people what actually has gone wrong with our education now (we all know that the people are most concerned about education): The poor management of SSBs? Or the problems of the Education and Manpower Bureau? If the respondents are free to choose their answers, I believe 99% of them will say that the Government has not been doing very well, instead of the poor management of the SSBs. Of course, many problems can occur in schools — there may be teaching problems; there may be problems with the school facilities. But are there

problems with school management? Of course, the management of some schools is really not good. We acknowledge this fact. I remember that I had once said in the meetings of the Bills Committee that, over the years, six SMCs had eventually been taken over. The Government does have the power to take over schools of bad management. However, we would like to ask one question: What actually is the most pressing educational reform now? Is it the implementation of SBM? Besides, we are not putting school administration onto the right track, but stirring up a major storm in the city.

This is the question we want to ask. If we feel that we will eventually stir up a major storm in the city, and it will be bad for the development of education, should we pull a stop and take a step backwards? If we insist on imposing it on a compulsory basis, the SSBs will feel aggrieved and resist it, or they may choose to give up operating the schools eventually. Is this a blessing for education in Hong Kong? Or is this what Hong Kong people would like to see? I can recall that, in a newspaper report, the Secretary has once criticized the Bills Committee as trying to "pick out bones from an egg". There is no problem at all if you feel that this Bill is an egg. But unfortunately, this Bill is not an egg; it is not so smooth. I often say that this Bill is a fish with a lot of bones: First, its bones will get stuck in the throat of the SSBs, and then it will eventually "kill" our education. This is not the outcome we want to see. You may ask why the bones will get stuck in the throat of the SSBs. There will be no problem as long as they co-operate. Why should we say that they may have a piece of bone stuck in their throats? It is because the SSBs do have some very strong views in this matter. They feel that, if the Government is allowed to adopt the "across-the-board" approach to impose the Bill on all schools, they will not accept it. They worry that, if parents and teachers are allowed to join the SMCs, it will affect their beliefs in sponsoring schools.

You may say that the worries of SSBs are unnecessary. Bishop ZEN said over the radio today that there was a 1% chance, that is, 1% of the schools would encounter some problems. However, do we want to see problems occur in that 1% of schools? Can they be given greater room to decide how they would open up their school administration? For example, it is all right if a SSB can make it very clear that it agrees to allow parents and teachers to take part in the school management committee under the two-tier framework. In fact, what makes educational organizations feel most angry is: The Government has put forward

the Education Commission Report No. 7, but before the recommendations in this Report have ever been introduced, it proceeds with the implementation of this Bill right away. If they are given room to first organize the SMC as proposed in the Education Commission Report No. 7 to facilitate the participation of parents and teachers in deliberations on such aspects as teaching and learning, and then they can be absorbed gradually to handle school administration, then it may eventually lead to an outcome, that is, parents and teachers participating in school administration smoothly. And in the process of their participation, SSBs will not feel that a fish bone has got stuck in their throat. Why can we not do this? Why do we need to make it compulsory?

Therefore, I very much hope that the Government can pull a stop at the last minute, and not to ruin the partnership relationship between the Government and the SSBs built up over a century. Please consider this: This good relationship has been maintained for more than a hundred years. Why should the Government cause all the havoc now to ruin the good relationship and eventually ruin also our education? Mr Tommy CHEUNG said that he hoped the Government could hold more discussion with the SSBs after the enactment of the Bill to determine how the issue could be resolved. However, frankly speaking, I feel that, and everyone knows that, the Government will forget everything once it gets through. So we should not let the Government get away. If we think that this Bill is not good for our education, we should then oppose it in equivocal terms. Our opposition to the Bill does not imply our opposition to the concept of participatory governance. Instead, we oppose the way in which the Government has implemented it. We also think that the Government should give SSBs more room, so that they can gradually open up their school administration, and maybe it can be implemented first on the level of the school management committee. This is also one of the proposals put forward by the Government in the Education Commission Report No. 7. Why can this not be done?

Therefore, I hope Members can vote against it, so as not to let the Government slip through this hurdle and forget everything afterwards. On behalf of the Hong Kong Confederation of Trade Unions, I strongly oppose the Second Reading of this Bill.

Thank you.

MR MARTIN LEE (in Cantonese): Madam President, we all know that our cute Secretary for Education and Manpower, Dr Arthur LI, played electronic games in this Council some time earlier. This time around, he has come here to play a poker game with us. How? He bluffs us democrats by saying that we are not giving him support when he is championing for democracy. Unexpectedly, our old friend, Mr Albert CHAN, bluffs him in return by saying that the system as practised in the United States and Canada, that is district elections, can be used to return our management committees in the schools. At that time, I could see from the body language of Secretary Prof LI that he was kind of very moved, and it could well be that he wanted to say, "Oh well, Big Hulk, if only you had told me earlier, then I would have really championed for democracy." However, and after thinking it over, I think the Central Authorities behind his back will never allow him to use these chips to bet with Mr Albert CHAN. So for this game of poker, I do not think our Secretary Arthur LI will go on playing it, for he simply cannot match the stake on the deck. He will lose in this game of democracy. I hope he will never try to provoke us by waving the banner of democracy, because he will not be able to match the stake.

After talking about poker games, let me talk about a subject which belongs to my profession, and that is law. I recall before the reunification, and that was when we were drafting the Basic Law, or the Joint Declaration rather, there was this point which was already regarded very important, that is, our system should remain unchanged as it was as much as possible. Mr DENG Xiaoping said that the most important thing about "one country, two systems" was that our way of life, our system, our rule of law and everything would remain unchanged for 50 years. That was meant to put the minds of the people of Hong Kong at ease. For if not, the exodus from Hong Kong would go unchecked as great numbers of people would emigrate. It is precisely for this reason that we drew up the Joint Declaration and the Basic Law was drafted on the basis of the Joint Declaration. I did not take part in the drafting of Chapter VI of the Basic Law, but Mr SZETO Wah did. Chapter VI seeks to put matters in relation to education, science, culture, sports, religion, labour and social services together, and there is no mention on which article in the chapter shall override another. Article 141 is on the freedom of religious belief and it provides that "The Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region." That

means religious activities, including the internal affairs of religious organizations, will not be interfered by the Government. That is very important. Then the next paragraph says, "Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive financial assistance. Their previous property rights and interests shall be maintained and protected." This paragraph is about property rights, and again they are fully protected. The third paragraph is about schools: "Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services." The fourth paragraph says, "Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere."

Madam President, I am a catholic, though not a very religious one. The Catholic Church attaches great importance to this article, for there are worries that its ties with the Vatican may be affected. But there should not be any problems with that, for it is written very clearly in paragraph 4. So the Catholic Church would rest assured when Article 141 exists. We all know that the Catholic Church is persecuted on the Mainland, and the same goes with the Protestant Church. With the protection offered by this Article, the worries of the church will be dispelled and it can continue to operate hospitals, schools and social services in Hong Kong, trusting that the Basic Law and the SAR Government will not get out of hand. Now the SAR Government is to legislate on this matter, and the church, both Catholic and Protestant, is strongly opposed to it. People in the church are asking why this existing practice is being challenged. The church owns the schools. It has the authority to operate schools and it can decide how its schools are run. Many parents support this way of doing things. As a matter of fact, many students are graduates of these protestant and catholic schools. Many Members of this Council came from these schools as well. They enjoyed their school life. They hope that these schools with religious affiliation can be run the same way as it used to be.

Article 141 para 3 gives protection to this right by upholding their "previous practice". But now this practice is to be changed. The Government is not saying that nothing would be changed. It tells us not to look at Article 141 alone but also the part on education in Article 136. Let me read this out: "On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the

development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications." The Government is now saying that it wants to improve the provision and to develop and better the present system. It even says that the two provisions should be read in conjunction. There is no problem reading the two provisions in conjunction, but when they are actually read together, some conflicts will arise. A person with common sense will ask, "Which one of the two is more important? If Article 141 para 3 says that we can continue to run our schools according to the previous practice, then why should there be changes?" The Government says wait, read also Article 136. Article 136 is about education. It says that policies shall be formulated on the development and improvement of education on the basis of the existing educational system. That is to say, the right to run schools as provided for in Article 141 para 3 is subject to of Article 136 and that means, if anything is to be done to develop and improve education, then the provision may be changed.

This is where the problem lies: Why is it that Article 136 should be regarded as more important than Article 141? Why does Article 136 override Article 141 para 3? Just read this, there are no words like "subject to Article 136 of the Basic Law" in Article 141. If there are such words, then I will admit that I am wrong, but since there are no such words, it will mean that the two provisions are equally important. This is especially the case when they are put in the same chapter and every article is about one subject, such as education, science, culture, religion, and so on. Each one is different, so why is one provision regarded as superior to the other? I can find no mention of this in the legal opinion I read. Moreover, if this issue is taken to Court, the Judge will make his judgement based on the Cardinal Principle of Interpretation of Statutes which is commonly used. That is to say, whenever a conflict arises in respect of these two provisions on the surface, the Court will adopt a practice which is used in all common law jurisdictions, and that is, to adopt an interpretation to iron out the differences of these two provisions. Sometimes the Court will have to ease sideways and adopt an interpretation which is not a mainstream interpretation in order to avoid conflicts. But how should conflicts be avoided? It is very simple. If the Government really wants to control the schools, then by virtue of Article 136, it should not control those schools run by religious organizations. That would be fine. As for those schools run by the Government itself, that system can be applied to these schools. These are

schools without any religious affiliation. That would also resolve conflicts from both sides. In other words, schools run by churches may follow their "previous practice" as provided in Article 141 and they must not be affected by the Bill. As government schools and schools with no religious affiliation do not contravene Article 141 para 3, so the Bill can be applied to them. However the management of these schools would be no problem. This is how it should be done. There will not be any problem if this method is adopted. The effect of Article 141 para 3 will not be undermined and it will be fair to all schools with religious affiliations. For if not, the Government is cheating them and they will be lured to run their schools, hospitals and social welfare institutions while changes will be made to them in all aspects.

This is not just limited to the schools. Article 145 is about the social welfare system. It says, "On the basis of the previous social welfare system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of this system in the light of the economic conditions and social needs." Then for social welfare organizations like Caritas, are you going to impose restrictions on them and control them in this way? You may do so, but you are cheating others and the religious organizations. The same goes for hospitals. Whenever there is a dispute, your responsibility is to avoid a conflict in these two provisions and you must not say that Article 136 overrides Article 141 para 3. I would like to ask those legal advisers, "Which provision in the Basic Law is written like this? From where do you get this conclusion?" Things are not what you think. You cannot say it is all because Article 136 comes before the other one and so it should take precedence over it. No, this is not the way it goes. Whenever there is a conflict in law, it is the provision which comes later that shall take precedence. So what can you do about it? Your argument does not stand at all.

Madam President, what I am saying is just from the point of view of law. I hope the Government will understand that it will not run into any trouble if this Bill passes today, for many Members know nothing about the Basic Law. Even if they are perfectly clear about it, and even if they think that I am right, they will be persuaded by the Government. The Government is the most powerful, is it not? If it loves democracy so dearly, why can it not wait after the next election? However, the Government does not want to wait, for there may be more Members from the democratic camp — the number would not be much different, just somewhat larger. But the Government does not want to wait. It wants to

pass the Bill now. It cannot explain why there is nothing wrong with what I say in respect of the Basic Law. The idea of Margin of Appreciation mentioned by the Secretary is useless. It will not save him. He has to invoke the Cardinal Principle of Interpretation of Statutes, a fundamental principle in the interpretation of law, in order to prevent the emergence of any conflict between the provisions. This is how the problem should be solved. Secretary, if you are to use the former idea, you will know that your arguments will not stand and you will lose.

Thank you, Madam President.

MISS MARGARET NG (in Cantonese): Madam President, one of the reasons for me not joining this Bills Committee is that the scrutiny of the Land Titles Bill was already quite strenuous, still, I have been keeping an eye on this Bill. After repeatedly scrutinizing the Bill, we found that the fundamental problem lies not in SBM, but an expansion of the powers of the Government. We already find it unacceptable by merely looking at section 40BR. This section provides for the consequence a school shall face if it fails to establish an IMC. In fact, the provision under section 40BR is the crux of the entire Bill. Had section 40BR not been incorporated into the Bill, will there be a need to enact the law that we should deal with now? This is an open question. Section 40BR gives the Government the power to force SSBs to establish IMCs, this is the object of the Bill, and it is also the essence of the Bill, the goal of it, and this is why the Government is hell bent on making the law.

Why does the Government have to force each school to establish this IMC? We can see some clues from this Bill. It is because under this Bill, the Government is given the room to intervene and manipulate school administration, that is, it can interfere with the way the SSBs runs schools through these IMCs. I know the Government will not interfere with each and every school or SSB, but if it has to intervene, this mechanism enables the Government to effect intervention, and the Government is vested with the legal power to intervene in the deep end. The essence is that the Bill gives the Government the power to do things that it cannot do now.

Madam President, I think that sponsorship of a school should be diversified instead of unified, instead of being obliged by government convictions. However good the convictions may be, the Government should

not force them on people. Insofar as SBM is concerned, it is not necessarily the best way to implement it through a body corporate, even if the best way is to adopt the corporate model, the Government should not make it compulsory or force others to think that it is the optimum solution. After all, SSBs will ask, "Since we will have some difficulties to implement the system which other people think most fitting in our schools and environment, whilst we consider that the same goal can still be achieved through some other ways, why must the Government force us to comply with its requirements of school management? In fact, the Government has been thinking that it is doing the best and most correct thing. Everybody in the world has his own interests, only the Government is disinterested, thus the things that the Government said and recommendations it made should be in the best interest of the public; this essence has been reflected in various government policies and bills, and this Bill is no exception.

I am worried by this inclination, in particular when it is applied to education. Education is the lifeline of society, and precisely because of this reason, the Basic Law has therefore stipulated a provision to protect it. A free society should protect the freedom of education, and we should not allow education to be reduced to an instrument of the Government, and we should not allow the unification of education under the Government's control.

Madam President, a number of Members have earlier delivered their speeches, including Ms Audrey EU and Ms Cyd HO. I have listened to them attentively all along, and I agree with their viewpoints. In the meantime, Mr IP Kwok-him attacked Mr CHEUNG Man-kwong by accusing him of speaking incoherently. However, I feel that even a person supports the establishment of IMCs for school management will still be wary of compulsory enforcement. Madam President, I do not need to elaborate it in detail, in fact a lot of Members have expressed similar views, but I feel that as far as the detailed particulars are concerned, there are certainly a lot of areas that warrant discussion. Nevertheless, I think the core question should not be evaded, that is, the Government will further interfere with school administration by way of enacting this Bill and establishing IMCs.

Madam President, for that reason, I cannot agree to the Second Reading of the Bill. I will certainly vote against this Bill. Thank you, Madam President.

DR YEUNG SUM (in Cantonese): Madam President, the Bill under discussion today is an extremely significant one. I am sure that with the intense lobbying of the Government and the strong convoy of the "royalists", the Bill will certainly be passed. But I still hope that members of the public can realize that the Bill will become a watershed for education and the sponsoring of education in Hong Kong, something that will produce far-reaching consequences and unprecedented disasters. Therefore, I hope that the Secretary can take note.

I do not know whether the Secretary will change his mind at the last minute. I naturally hope that he will, but in case he does not, I must say he will certainly face a deterioration of relationship with many SSBs during his remaining term of office. I also hope that parents and teachers can realize that the relationship between SSBs and the Government will definitely deteriorate in the future. Communication has become the main trend in Hong Kong now, but under such a situation, will the harmonious atmosphere be sustained? I hope that the Secretary can take special note.

Madam President, a glance at the Bill seems to suggest that the Government has sought to address the concerns of SSBs in many ways. To begin, every school must establish an IMC, but the number of managers representing the SSB may be as high as 60% of the total membership, and these representatives can be nominated by the SSB itself. And the rest 40% will comprise elected representatives, alumni, teachers and students. Furthermore, the sponsoring body may also manage its own assets and draw up its own constitution and objects, so as to ensure the attainment of its educational goals. And, it may even replace managers who do not perform satisfactorily. As a result, the Government may well argue that the Bill is capable of looking after the needs of SSBs.

We in the Democratic Party have examined the Bill over and over again. Mr IP Kwok-him was right in saying that all our remarks would be put on record, and that all of us would be held responsible for what we said. Mr CHEUNG Man-kwong cited the viewpoints that he and I raised at the meetings of the Panel on Education. Our position is extremely clear — let me just repeat it here — we totally support the participation of parents and teachers in school administration. We did urge the Government to make this possible by way of legislation. We will not distort this fact, and we still stand by this principle. But, Madam President, I can tell the Secretary that the Democratic Party will vote against the Bill.

We supported the participation of teachers and parents in the running of schools and requested the Government to democratize school management by enacting legislation, but why does the Democratic Party still oppose the Bill being put forward by the Government, which, as I have mentioned, seems to be able to look after the needs of SSBs in many different ways? The answer to this question can explain why we have examined the Bill repeatedly and pondered so much on our voting position. After all the thinking, I must inform our Party Convenor, Mr Fred LI, that we firmly oppose the passage of the Bill.

Madam President, there are six faults with this Bill. I shall give a brief summary of them, in the hope that people can know what they are. First, the object of this Bill is the democratization of school administration, and the Government has also been boasting of this. But in reality, democratization is just a façade, and there is no genuine democratization at all. The membership of an IMC can be cited as an example. The representatives of the SSB are allotted 60% of the membership, so the remaining 40% will constitute just a minority. In other words, teacher and parent representatives will be in the minority, and not all the managers are to be elected. And, we must not forget that even after a parent or teacher manager is elected, he or she must be deemed fit and proper and appointed by the Government.

Several Members have talked about Mr Christopher FUNG of Kwun Tong Government Secondary School. Despite his records of participation in social movements, he was still strongly supported by the school's alumni and elected by a large number of votes. But the Government has so far been unwilling to appoint him as a member of the management committee; this shows the clear presence of political vetting. If the Secretary really thinks that all this is democracy, I must beg him not to mention this concept ever again.

Second, the Bill will victimize school managers. Sponsoring bodies, especially churches, have so far been able to offer protection to those working in their SMCs, because they are well-organized and can take out statutory insurance. However, following the establishment of an IMC in every school, school managers will have to shoulder both criminal and civil liabilities on their own. Although the Government has said that it will consider discussing with them the taking out of insurance against legal risks, I nonetheless think that the presence of criminal and civil liabilities will still impose a psychological burden

on them. I hope members of the public can see this point, the point that after the passage of the Bill, all IMCs and school managers will be affected. I must urge the Secretary to explain clearly how the passage of the Bill will affect school managers.

Third, the Bill will give the Government an even greater power of intervention. Madam President, it must be put down on record that the Government is not devolving its powers but just trying to grab more. Whether in the case of the Housing Authority, the Education Department or the Department of Health, all the powers connected with advisory bodies are invariably vested in the relevant Bureau Director on the ground of political accountability. Hence, as mentioned by Miss Margaret NG, under section 40BR proposed in the Bill, all schools must comply with the relevant requirements seven years after its passage, that is, by the end of the seven-year grace period — yes, it is seven years, for the Secretary has after all made a small concession here. If a school does not comply, the Government may invoke section 40BR to cancel the registration of its managers. This is almost the same as taking over the school. But if it is really something good to have, why should anyone be forced to comply? Is this meant as a punishment for schools?

I only wish to point out that the passage of the Bill will give the Government a very great power of intervention and such intervention will be of a very harsh nature, and this is very much like placing weak and defenceless children at the mercy of their harsh parents. Thus the Government is just trying to grab more powers, to centralize powers, to force SSBs to surrender their school operating right to the Secretary. Is this how the Government interprets political accountability?

Fourth, there is different treatment for different types of schools. Madam President, may I ask the Secretary to explain why government schools are not required to set up IMCs when he gives his reply later on? Why are Direct Subsidy Scheme (DSS) schools also not required to do so? And, why did the Government change its position, why did it suddenly say that there had been some confusion and IMCs were not actually required for DSS schools, only after Mr Tommy CHEUNG had expressed his opposition to the establishment of IMCs for DSS schools? Why is there different treatment for different schools? The Secretary may wish to offer a clearer explanation later on. If it is really

something good, what is so wrong with sharing it among all schools? This is the fourth problem.

Then, there is the fifth fault. Madam President, the passage of the Bill will certainly damage the relationship built up over more than 100 years between SSBs and the Government. Madam President, my wife has been discussing the Bill with me quite a lot. She is a devoted Catholic, and she supports the Catholic Church. But I always ask myself whether, in my consideration of this Bill, I have in any way accorded too much attention to her viewpoints and looked at it too much from the perspective of the Catholic Church. But I also keep wondering why we must fix anything that has been running smoothly. In other words, if it works, why fix it? Does the Government think that — I am not just talking about the Catholic Church, for I have also come into contact with the Methodist Church and the Sheng Kung Hui, which run a total of 400 primary schools and 700 secondary schools, or one third of all schools in Hong Kong. By forcing this Bill through, the Government and those "royalists" who are here to support it will damage the partnership built up over the years between missionary schools (run by the Catholic Church, the Methodist Church and the Sheng Kung Hui). Are there any good reasons for this? Who shall bear the social costs? Is the façade of democracy being used to deter democrat Members from voicing opposition? If society must pay a high price for this, then, very sorry, we will still say no to the Second Reading of this Bill. For the same reason, we will also vote against its Third Reading.

I can tell the Secretary that for all these six faults, we in the Democratic Party will vote against the Second Reading of the Bill. The sixth fault of the Bill is that it will produce disastrous effects on the local education sector. Many Churches have made known their positions to the Secretary. The Catholic Church has said that even if the Bill is passed, it will not comply with it. Mr Timothy HA of the Sheng Kung Hui also said so yesterday, adding that his Church might hand back some of its schools to the Government. It must be pointed out that many of the schools concerned are prestigious schools very much sought after by parents. Such is the position made known by the Sheng Kung Hui. If the Bill is passed and some schools are really handed back to the Government, what is it going to do? It will certainly not be anything funny.

I see that the Secretary has one virtue, Madam President. He is always so courageous, quite like the Democratic Party. But he is not as careful in

thinking and as good in self-examination as the Democratic Party, and this can be rather dangerous for him. I hope that the Secretary can really consider the matter very carefully. I am not joking; I can say publicly for the Democratic Party that the passage of the Bill will lead to disastrous consequences in the education sector. Of the one third of all Hong Kong schools mentioned just now, how many will be handed back to the Secretary? Where have all our frequent talks about communication, harmony and amity gone? Why have such tactics and means employed in the name of improving school management? No one objects to the avowed objective, but should we also consider what tactics and means to employ? What about timing? And, other matching measures?

Many Members, including those from the Liberal Party, have mentioned that the Bill is marked by remnants of the colonial era and wondered whether we should grasp this opportunity to make changes. Mr Tommy CHEUNG has exhorted the Government to repair its partnership with SMCs after the passage of the Bill. But spilt water cannot be gathered up again — what is done cannot be undone. I do not know whether the Secretary will change his mind at this last moment, during the Third Reading or Second Reading of the Bill. Well, I understand that it is no use asking such a question. I only wish to put my reminder to him on the record. If anything really happens in the future, he will realize the foresight of the Democratic Party.

Madam President, let me just sum up my points. On the one hand, the Government already has enough votes to push the Bill through. On the other, some people may wonder why the Democratic Party and pro-democracy Members should object to the democratization of school management. I must therefore clarify that we have never opposed the democratization of school management, have never opposed the participation of teachers and parents. My position and that of Mr CHEUNG Man-kwong have never changed, as has been pointed out even by Members from the DAB and the Liberal Party. But we insist that serious consideration must be given to the means and ways to be adopted and also to the question of timing and the prices to be paid.

This is what makes the Democratic Party different from the Secretary — besides being courageous, we are also capable of careful thinking and self-examination. Mr CHEUNG Man-kwong's amendment is very good, and it is the outcome of our lengthy consideration. A grace period of five years is already provided for under the original Bill, and the amendment proposes to add

two more years, making it seven altogether. The Democratic Party on the other hand proposes a three-year trial period, during which schools are free to decide whether to follow the provisions of the Bill. The relevant experience should be studied after three years, either by the Legislative Council or an independent committee set up by the Government, and the effectiveness of implementation should also be reviewed. If the findings show positive effects, all schools in Hong Kong should be required to follow suit upon the expiry of the trial period. But if problems are detected in the implementation of the Ordinance, it must be shelved or even repealed.

However, I am afraid that under the rules of procedure, it will not be possible to introduce this amendment because the Government has also put forward an amendment, and its amendment will certainly be passed. Once the Government's amendment is passed, Members will have no chance to vote on Mr CHEUNG Man-kwong's amendment. As a result, although his amendment proposes a compromise, Members of this legislature will have no chance to make any choices. The reason is that we must first vote on the Government's amendment, which will certainly be passed.

What we will have in the end will definitely be a Bill with the six faults set out by me. For this reason, we will cast a negative vote.

Madam President, in summing up my remarks, I must make it very clear that first, we in the Democratic Party still support the inclusion of parents and teachers in SMCs, for our position has never changed. Second, in regard to schools that do not set up IMCs, the Government even wants to adopt the harsh measure of replacing their school managers; this is a disguised form of government take-over, which is utterly unacceptable. And, of course, the notion of "fit and proper" that I have mentioned is not in line with principles of democracy either. Lastly

PRESIDENT (in Cantonese): Time is up.

DR YEUNG SUM (in Cantonese): Thank you, Madam President.

MR ANDREW CHENG (in Cantonese): Madam President, just now Mr Martin LEE said that he was not a devout Catholic. If Mr Martin LEE were not a devout Catholic notwithstanding the fact that he goes to the church every morning, then I cannot even call myself a redemption-seeking believer in front of a Catholic or Bishop Joseph ZEN, father of my *alma mater*, the Salesian School. Each time Bishop Joseph ZEN was interviewed in a radio programme, I would listen carefully in order to listen to his views on the amendment to the Ordinance. Yesterday morning, he was interviewed in a radio programme. I called Bishop Joseph ZEN after his interview in order to have a direct conversation with him. Since I am not a member of the Bills Committee, I have very limited knowledge about this Bill, and some of my knowledge came from articles and interviews of Bishop Joseph ZEN. Bishop ZEN asked me, "Andrew CHENG, will you deliver your speech by then?" I said, "I am afraid my information is inadequate as my knowledge of the Bill is rather scarce." Bishop ZEN then showed me several points to note, and I wish to express my views on the potential impact of the Bill according to my own conscience, the points he showed me, the articles he provided to me, and I also wish to express my views from the perspective of a parent, because I was a member of the Committee on Home-School Co-operation of the Education Department. I also wish to express my dissatisfaction towards the Bill in view of the fact that I received more than a dozen years of Catholic education and because both Bishop Joseph ZEN and I are fellow Salesians.

Madam President, there are numerous school sponsoring systems in the world; some are wholly government subsidized, others are sponsored by individuals or jointly sponsored by individuals and sponsoring bodies. In the past decades, Hong Kong has been implementing a unique system: Government and organizations, in particular religious bodies, have been sponsoring aided schools. This system has been praised by many international educators. The Government can save money on the one hand, and ensure that there are dedicated people who would sponsor schools seriously on the other; and religious bodies shall have the opportunity to sponsor schools according to their own ideologies. Hence a diversified education "market" begins to take shape and parents are given more options. Over the years, the system has been proven and successful.

Nevertheless, ever since Mr Antony LEUNG became the Chairman of the Education Commission, he appointed the so-called Advisory Committee on School-based Management and gave birth to a consultation paper in 2000. The

current legislation, that is, the Bill, was drawn up according to the findings of that consultation paper. Mr Antony LEUNG also expressly stated that it was a dynastic reform. Mr Antony LEUNG was actually the mastermind of SBM.

According to the analysis made by SSBs and the academics, it is not difficult to see that the gist of this dynastic reform is the incorporation of school management committee (SMC). Under the current system, a sponsoring body governs the school by way of appointing the SMC, and it is fully accountable to the Government by way of appointing the school supervisor. Under the new legislation, the incorporated management committee (IMC) of each school will be accountable to the Government, while the sponsoring body will be made a mere figurehead, the ideology of the sponsoring body will then be swept under the carpet.

According to this analysis, although the Government explained that power would be devolved, it is actually requesting SSBs to transfer powers to individual SMCs, while the Government is centralizing the powers; in particular, sizable SSBs such as the Catholic and Protestant Churches will feel being split.

If members still remember a remark made by Mr Antony LEUNG, that "sponsoring body is one of the three big mountains obstructing education reform", we can be able to understand the grave concerns of SSBs. Enacting the new legislation without addressing these concerns would undermine the relationship between the two sides, and it will also cause irreversible damage to education in Hong Kong.

Of course, the Government will not admit the abovementioned "conspiracy", as it will only vigorously argue that this Bill will enhance the transparency and democracy of school administration, in particular it will highlight it as the aspiration of parents, that it is the aspiration of millions of parents. Numerous Christian and religious organizations have repeatedly claimed that these are only the slogans and tricks of the Government.

Under the stringent regulation of the Education Ordinance, which is left behind by the colonial government, and the effective monitoring of the media, there is no dispute about the transparency of SSBs over the years.

Madam President, it will be hard to convince the people that a Government which resists democracy has the sincerity to introduce democracy to our schooling system. In fact, the remarks made by SSBs are correct, "education is a service, and the diversification in service will provide diversified options to the public, this is real democracy; the covert act of transforming all the schools into government-run schools is in fact the undemocratic approach in a socialist system."

The Government's act of sowing discord between parents and SSBs is absolutely irresponsible. SSBs opposing the Bill absolutely agree that parents should participate in school administration and help promote the spirit of SBM, what they disagree is the fact that the Bill will create a loophole which may facilitate parents or teachers who are in strong opposition to the ideology of the sponsoring body to bypass the sponsoring body once these parents or teachers are elected to the SMC, but the Bill does not provide a mechanism for the sponsoring body to preserve its ideology of sponsoring the school.

SSBs have only asked for some time to prove to the Government and the public that they absolutely need no new legislation to promote SBM in a more steady way, so that they can implement the recommendations made by the Education Commission Report No. 7 but shelved by the Government on the one hand, that is, to introduce the School Executive Committee with elected representatives, and to seek parents or teachers who agree with the ideology of the sponsoring body to join the SMC on the other.

Madam President, denying SSBs the opportunity to demonstrate what they can do and brutally, hastily make the law is in fact being irresponsible to the cause of education.

Madam President, I so submit.

MR LAU CHIN-SHEK (in Cantonese): Madam President, a consensus has been reached between the Government and the public all along, that is, it is agreed that education in Hong Kong should be diversified and choices should be open to the public. If we are to maintain diversification of education, we should allow the continual participation of the church as a sponsoring body. The church has its unique beliefs in sponsoring schools; it will make use of its religious belief,

theological theories and values as the guiding principle in sponsoring schools. For that reason, it is very important to allow the church full freedom of sponsoring schools. As to whether or not I should support the Bill, my decision is that I should respect the views and stance of the church; therefore, I oppose the Second and Third Readings of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR LEUNG FU-WAH (in Cantonese): I hope Secretary Prof Arthur LI will not play computer games or poker. As playing games would be a waste of time for students, and also for the Secretary. Playing poker is also not a good habit, for you may lose all your fortune in gambling. Hence, I hope the Secretary would not accept the revolutionary challenge posed by Mr Albert CHAN. I hope the Secretary can, as Dr YEUNG Sum said, advance bravely, choose what is good and hold fast to it.

Madam President, in our colleagues' speeches, especially those opposing the Education (Amendment) Bill 2002 (the Bill), there is a remark which I have heard on many occasions over these four years in this Council, that is, "with the support of the 'royalists', the Bill will definitely be passed today". On proportion, fewer Members will speak on the rationale of specific provisions of the Bill, even if some of them touch on the content, they are only talking about it in a rather vague concept. This also reminds me of the legislation on Article 23 of the Basic Law, during the course of which I heard colleagues make similar remarks over and over again. Whenever discussions were made and all the questions were addressed by the Government, those Members would eventually say: Whatever you said, however relax was the legislation as compared with that of overseas countries, I would never believe you as your government was not returned by universal suffrage, thus there was nothing you could do. In the course of enacting legislation on Article 23 last year, I heard this remark several times at a number of meetings which totalled up to more than 100 hours.

Madam President, though I am not a member of the Bills Committee, a lot of divergent views had been raised in the course of scrutiny, while some of them were in favour of the Bill, some of them were not. I noticed that among the

people who support the Bill, some of them used to agree with the democratic camp in the past. This phenomenon inspires my interest to understand the matter. Basically, after learning all the pros and cons remarks which have been made public, I wish to raise a few points here.

First of all, despite being labelled repeatedly as a "royalist", I have to make it clear that I support the Bill. The reason is quite simple; the implementation of provisions on SBM and the introduction of parent and teacher representatives into the SMCs will be conducive to improving the transparency and accountability of school management. This is exactly the underlying principle and spirit of the Bill. Some people even take this as a start of democratization in school management. However, the Democratic Party does not appreciate this move. Therefore, I do not see any reason for us to object to the Bill at this stage.

Earlier on, the Government engaged in some very heated debates with many SSBs and non-government groups on the provisions on SBM. The debates boiled down to a crucial point, that is, whether various parties are considering out of their own interest and power, or are they really taking the interest of pupils and the ideal of education to heart?

The major opponent of the Bill has been the very out-spoken Bishop. The radical Bishop is also the pioneer in the opposition camp led by a church.

Some SSBs with religious affiliation have claimed that they would suspend running certain schools or even prosecute the Government if the Bill were passed. This reminds me of similar situations faced by other stakeholder organizations. I want to ask these religious SSBs the following questions. What is the mission of their schools? Why did individual religious body fight for democracy on political issues, and why did some religious leaders even deliberately come to the forefront, changing completely their previous style of not getting involved in political matters? However, on the issue of SBM, why have they insisted on retaining absolute control, denying the participation of parents and teachers, and refusing to "democratize gradually school management"? Is it true that for different areas, you would have different views and interpretation of democracy? Sometimes "I am the people and you are the sovereign", while some other times "you are both people and sovereign" or the other way round. That baffles me indeed.

Nevertheless, there are still many people in the community who support the Bill. In the past two months, parent-teacher associations (PTAs) of 14 districts and a few hundred parents have publicly expressed support for this Bill. I believe they know the pupils' needs best, and their voices are absolutely as loud as those of the SSBs. However, as these parents do not have any vested interest, they need not take into consideration votes and seats, their stance is relatively neutral, so we must respect and carefully consider their opinions.

Earlier on, Secretary Prof Arthur LI wrote an article, pointing out that the SSBs had ascribed the Bill to a "conspiracy theory", viewing something good as evil. He opined that both the religious SSBs and the community as a whole did not have trust in the SAR Government, looking at all the public policies of the SAR Government skeptically. I agree with him on this point. I do not understand why the SSBs have so little trust in the Government. However, some Members did bear testimony to this, for instance, just as Ms Emily LAU said (I always pay a lot of attention to her speech), under Chinese sovereignty, activities such as the singing of national anthems and the hoisting of national flags in schools of Hong Kong are all conspiracies. This is my understanding of her point, though she did not use these words. This is only my interpretation. Being a Chinese national, I find it most strange. The singing of national anthems and hoisting of national flag are just as natural as we eat and breathe, why would it become a plot by the Central Government against our education system that threatens our autonomy in the SAR?

Other than Ms LAU, from Mr Albert CHAN's speech, I can apparently see the crux of their opposition to the Bill. In fact, all measures leading to reforms and improvements would be interpreted as conspiracy, and elevated to the higher plane of principle for opposition. There is objectively no room for discussion. Madam President, I find it really sad for the people of Hong Kong.

Just now, Ms Audrey EU held another view, pointing out that it was not a matter of democratization and that the two issues should therefore be separated. I believe it is only a matter of debate tactics, which is not actually discussing the Bill itself.

Another colleague just mentioned that the operation of schools should be determined by market force. I find that yet another queer argument in this

Council. Also, some colleagues pointed out that when the Advisory Committee on School-based Management published its consultation paper four years ago, the Democratic Party did support the proposal, and this has been proved by Dr YEUNG Sum's speech just now. At that time, he also criticized the appointment of 60% membership by the SSBs as too high, and suggested to adjust the percentage lower to 50%. And Mr IP Kwok-him even said that they had suggested to allow pupil representatives returned by general election to attend meetings of the SMC. However, four years down the line, they have changed their stance today. Why are they doing this? What is that for? When deliberating on the Bill, what are their ultimate considerations? I believe they know it very well, and the eyes of the public are very clear. The Democratic Party is not insisting on something good, and the reasons are obvious.

Madam President, I absolutely do not worry about the opposition camp (including the Democratic Party), as they would be able to make out a good case for themselves at the end of the debate. They must be able to do so. I have full confidence in their eloquence. Nevertheless, whether or not the public are convinced is yet another issue.

I am quite convinced that the so-called ultimate consideration or the genuine consideration is that a good piece of legislation would be a Bill capable of smearing other organizations, smearing other colleagues who hold different views today. As to whether or not the Bill is good to the education system, it is none of their concern. They are only concerned about whether they will be able to be re-elected. From this objective, what they are doing is trying to distort the truth and turn white into black.

Madam President, in conclusion, I am indeed feeling sad for this Council. In this Chamber, we are very often not reasoning with truth, but only considering our ultimate goals, we only care about gaining votes or winning seats for the political party to which we belong. However, why, most of the time, can we not allow the implementation of a piece of good legislation, a Bill that is conducive to social progress?

Finally, Madam President, I am convinced that a piece of good legislation, a correct direction, merits an opportunity of implementation. I believe history will do justice. Today, the remarks of all Honourable colleagues will be clearly recorded in the Hansard, if our education system will make any progress at all, if

there is any improvement in our learning environment, if our next generation can make greater commitment for our community and our country and be more courageous, those Members opposing this Bill today should examine their own conscience and reflect on themselves. I believe this situation will definitely happen. Thank you, Madam President.

PRESIDENT (in Cantonese): Ms Emily LAU, are you seeking elucidation?

MS EMILY LAU (in Cantonese): Madam President, I request a clarification. Because Mr LEUNG Fu-wah just now said that he knew I had not said that singing the national anthem and raising the national flag was a conspiracy; he said that I had not made those remarks. Can I ask him to withdraw his remarks? Madam President, I have not made such remarks. All I had been doing was just sitting here, but he simply made a loose-tongued allegation.

PRESIDENT (in Cantonese): Have you finished? If you have finished, please sit down before I give you a reply. Ms Emily LAU, I have listened to that carefully. Mr LEUNG Fu-wah said that it was his feeling. In fact, sometimes in this Council, a number of Members, including you, would talk about the way you feel, and I would not say that it is offensive, because it is just a subjective feeling, not an objective fact.

MS EMILY LAU (in Cantonese): Madam President, then can he speculate the motive of others based on his own feelings? He said something that I had not said. He was only speculating what I thought. Should we actually allow such remarks?

PRESIDENT (in Cantonese): That is right, unless the speculation is very obvious, such as he said that you have planned a conspiracy or said that the Government have an evil design, then he is speculating your motive. It is impossible for me to disregard precedents and look at this case alone. In this Council, there are abundant precedents that other members said what they felt, but I am unable to determine whether or not it was a speculation. Similar situations did occur many times in the past, I think you will realize it if you look up our verbatim record of proceedings.

MR ABRAHAM SHEK: Not being a member of the Bills Committee, I am not qualified to speak on the subject. Since so much efforts, hard work and time have been spent by members on this Bill, it is highly admirable. But as a citizen, I also feel an urge to speak out. The eloquence of Audrey is persuasive, her logic is even more convincing. Emily's rationale is so un-Emily as this is the first time in this Chamber that she pleads with the Government to adopt CHEUNG Man-kwong's proposal. This is not the normal Emily's way of "no talk, no agreement". The professionalism of CHEUNG Man-kwong's argument is a true representation of a class of professional which is sadly and unfortunately evaporating. The quality of education is sinking. The pan-democratic voice on this subject definitely is not a voice in the wilderness. It is a voice based on reason, pragmatism, and respect for different opinions and freedom of choice. The DAB's defence of the Government is based on its sound foundation of the educational principle of central control. This is also an accepted approach to education administration and should also be praised.

I ask myself: Should I speak or should I not speak? If I speak, what role should I assume? As a Catholic? Though I am not a good Catholic, I am still a Catholic. As a past student of a Catholic school? As a father of three daughters who attended an Anglican school — the St. Stephen Girls' School which is one of the best in Hong Kong? Or as a citizen and a pro-government legislator? I found these roles all so confusing, and that is why I only started to write while everybody was talking. As a Catholic, I only need to follow my church teachings in the matter of my religion. In the matter of the state, I abide by the state laws. This is no different from a bishop or a priest, or a layman or a bad Catholic like me because this is actually the teaching of God — render unto Caesar, the things that are Caesar's, and to God, the things that are God's.

On this basis I would like to talk about this subject. What is education and why is it so important? Education is a transfer of social values, tradition and knowledge from one generation to the next. Education is the cornerstone of a society, for without education, there will be no civilization, not to speak of a civil society. We are here today debating politics. On this particular subject, it is a true reflection of what good education we have received.

Earlier, I have said what renders the Church belongs to the Church, what renders the state belongs to the state. Bishop ZEN's argument is based on this belief because he believes that religion and religious teaching and education are based on the religion which he practises. It is God's work and he has a right to

protect it. Furthermore, he believes that such a right is being protected by the Basic Law, as Audrey and Martin have said earlier. The Church believes that it has done this work continuously for hundreds of years since the founding of the first missionary school in China and in Hong Kong then as a colony.

Mr Secretary, I urge you to try to see what the Catholic and Anglican Churches see and believe. There are strong reasons for their beliefs. Most importantly, they do not harbour any political belief or political ambition. They only want to do good to our children by giving them a sound education, as you and I were the recipients.

As a past student of a Catholic school, I must say that the quality of education was the finest I have ever received, not only in terms of academic foundation they gave me, but also more importantly, the nuns and priests had taught me to be a good person, with a clear conscience. They did not ask me to believe in God, they asked me to have a clear conscience. That was the type of education the church schools gave. In those days, there were no laws stipulating how these schools should run, and they run them very well. Nor was there any teacher or parent participation because they believed what they did was right. But then again, there is nothing wrong in teacher and parent participation. In this regard, Audrey also said that the Church actually complied by including teacher and parent participation in the school management team. Why do we need a law to force these church schools down their throat for compliance? There must be a good reason. Explain to us. I look forward to your reasoning.

Mr Secretary, your fervent belief, desire and conviction to improve the quality of education in Hong Kong is highly evident in your work as Secretary. This time, the way is pushed through without consensus from the Christian front, leaving a sour taste in the mouths of many. You will not be out on the streets protesting, but there are many ways for opinions to be voiced. This is definitely not the Arthur's way — usual way of consensus and compromise. Your argument for the Bill which is based on democratic principle is founded on shaky grounds. This time, the true principle of democracy is based on the freedom of choice, respect and belief. Selective approach to the adoption of democracy is not wise as it would also backfire on the Government.

In religion, democracy is alive and kicking, from the very minute we enter into agreement with God, that is the choice of democracy. We have a freedom

of choice. We go in and make that commitment. So, democracy is true. Please do not accuse the Bishop nor any other person of not being democratic if they do not believe what you believe. Democracy finds its level as water has different levels and it will find it. The same principle also applies to parents and teachers who choose the church schools for they know the rules of the game before entry. If they seek changes, they find changes within the system, and not to hide behind government laws.

Mr Secretary, may I again quote from the *Bible* the simple truth that law is made for men, and not men is made for law. Blessed are those who are meek, and blessed are those who can understand. They will win the day. Mr Secretary, I urge you to be very careful of what you are doing, because when it comes to education, unlike housing, you cannot turn the clock back easily.

Now, I will talk about conscience. As a pro-government legislator of this Council for the last four years, I have no regrets. I will give you my support, believing that you have very good intent. I will also give you my support trusting that what you are doing is for the good of our children. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, the day before yesterday, when I listened to the debate between Bishop Joseph ZEN and a parent representative in the radio programme "Millennium", I recalled an English saying, "the shoe is on the other foot". Why were the remarks of Bishop ZEN — a fighter for democracy — not consistent with his usual comments? He said that the SMCs should maintain their absolute right, and if parents were to participate, they could join the School Executive Committees. Since the SMC managed the finances of the whole school and was the most important policy-making body, it should be controlled by SSBs. It was not necessary to have the participation of parent representatives, and a lot of problems would arise with the participation of representatives.

These comments and viewpoints of Bishop ZEN, we have heard a lot of times. In a democratic society, we will respect different views. However, the comments seem to be inconsistent with his usual comments. Some colleagues, especially Ms Audrey EU, said that the Secretary should not divide our views with democracy. What I have to ask is: What exactly is democracy? In

English, we can distinguish capital D from small letter d; Democracy as in democracy of a democratic political system, while democracy entails democratization. I heard Ms Audrey EU say that if she had any view, there would be a vote by the family. Similarly, my family does the same. This is the spirit and culture of democracy. Then, does it mean that the family has already been politicized? No, it only signifies the spirit of democracy.

The Liberal Party always says that if universal suffrage is to be implemented in the elections in 2007 and 2008 in one step, it is indeed too rush given the history and existing conditions of Hong Kong, as our conditions are still insufficient and not mature enough. Therefore, we opine that some conditions must be created to facilitate our steady progress forward. There will certainly be democracy. The target is also set in the Basic Law and we have to attain that target as soon as possible. However, we cannot be reckless in this attainment process. We have to proceed step by step. This is the development of a democratic political system. How can these conditions be created? We have to promote the spirit of democracy in society. For instance, in the family, we can conduct decisive voting, participate in building management, instead of having only a few enthusiasts working for that purpose while facing others' swearing, so that no one dares to take over the tasks in the owners' corporation.

In the school, there should be more stakeholders, which means that those who are related are given the opportunity to participate in policy making. And that is democratic participation. Some people will think that if there is democratic participation, it will immediately become politicized. In fact, in a society, what we want to see is — this is an ideal — when we are in the course of democratization, or implementing democratic participation, or creating some conditions for democracy, or expressing the spirit of democracy, we should try not to let some politicized or negative events bring about some adverse consequences to the originally well-intended democratization. This is our wish, and also an ideal.

However, this is not a perfect world. Some things have a positive as well as a negative side. Nevertheless, through our efforts, we can try to avoid the negative side but give full play to the positive side. The Bill under discussion enables the stakeholders of schools to participate in policy making. Parents and teachers can share the right to participate in policy making. However, most of the right should, of course, be given to SSBs, and we all agree with that. Even some organizations, like the Hong Kong Professional Teachers' Union, opine

that it is inappropriate for the SSBs to control 60% of the right, and their share should only be 50% or below. The Bill as it stands can still protect most of the right of the SSBs. Besides, there is one very important point which we must note clearly. Will parents or teachers, particularly parents because their children are studying in that school, hope the school to be run unsatisfactorily? Will they hope that the education received by their children be affected by the consequences brought forth? Will they hope that the school be developing in a negative direction? This is definitely impossible. To them, it is most imperative that their children can receive good education. In view of this, how different is their goal from that of the SSBs? Their common goal is sound operation of the school. However, during that process, people may have different views. Why do the SSBs not allow them to participate? Why are these important people denied participation?

In the final analysis, after much debate, some very eloquent people, including Bishop ZEN, have already aired their many arguments on this subject. It all boils down to the question of power and sharing of power. Originally, 100% of the power belongs to oneself, why should that be shared? A parent, Ms CHAN, said that she was not asking to share the policy-making right of the SSBs. She only wanted the right to speak so as to influence the policy-making power of SSBs. What is wrong or inappropriate with that?

Madam President, I hope that we can be very clear about all these arguments. No matter what the content of the provisions is, since these issues will closely affect certain people or their next generation, we should give them the right of democratic participation. If we are sure about this, we have to support this Bill. If we do not support this Bill, no matter what we say, we are actually voting against democratic participation.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR JASPER TSANG (in Cantonese): Madam President, in the debate this morning, a lot of colleagues, particularly Members from the Democratic Party, have put forward many reasons against the implementation of SBM through legislation. They said they supported democratization of school management, the opening up of SMCs and the participation of parents and teachers. These are the principles that they have been upholding. However, they oppose the

present legislation. Nevertheless, these reasons that we have heard for opposing the implementation of SBM through legislation are nothing new, as we have heard most of them before. These reasons did not first come from the mouth of Members belonging to the so-called democratic camp, but from the representatives of some SSBs two, three or four years ago.

I am running the risk of offending these representatives of the SSBs. When they put forward these reasons, they were not as eloquent and vigorous as our Members now. Mrs Selina CHOW quoted an English saying just now: the shoe is on the other foot. During the debate this morning, I often have this feeling that the shoe is on the other foot. It is interesting indeed.

These reasons raised in the past, I have to add, had been raised by the education officers of the Government that apart from the SSBs. At certain meetings, for example, the meetings of the Panel on Education, we might not see the representatives of the SSBs every time. When Members pressed the representatives of the educational department (that is, the government officials in the meeting) for an answer on when legislation would be enacted, the government officials would explain that some SSBs had such worries, they had such views and they saw such problems with legislation. The Government was responding to Members' demand for implementing SBM through legislation on behalf of these SSBs.

These reasons spelt out by the representatives of SSBs and government officials would invariably be seriously criticized by our Members, especially Mr CHEUNG Man-kwong, who is gifted with a silver tongue. A moment ago, Mr Andrew CHENG mentioned the two-tier structure — the church proposing that parent representatives could participate in the committee under it, and they could be returned by democratic elections. However, the SMC was responsible for policy making of the school, and thus parent representatives should not participate in it. When the SSBs made such remarks, what was the reaction of Dr YEUNG Sum and Mr CHEUNG Man-kwong of our Democratic Party? Dr YEUNG Sum was the Chairman of the Panel on Education at that time. According to the minutes, the Chairman was very dissatisfied about it. "Very dissatisfied" is actually an understatement. I did attend that meeting. When Dr YEUNG Sum was chairing that Panel meeting, he pointed out that the two-tier structure was intended to stall the pace of democratization of school

administration. To these tricks of the SSBs, he felt strongly disgusted at that time.

Come what may, this is politics. With the change of time, they have now turned around to defend the SSBs. Surprisingly, those opponents of the present legislation are those colleagues who positively demanded the Government to legislate as soon as possible and criticized these SSBs for delaying democratization of school administration at that time. Therefore, when Mr Andrew CHENG quoted Mr Antony LEUNG's remarks, that these SSBs were one of the three big mountains obstructing the education reform, I ask Members to reflect on such comments. What role do these SSBs play in the so-called democratization of school administration, and what was the attitude of the Democratic Party in the past?

However, Madam President, during that period of time, I did seriously think about whether or not to persuade the Secretary to withdraw the Bill. This is not because I am one of the alumni of a school whose SSB is strongly against the Bill. I received my primary and secondary education in the school under the same church. The bishop of the church is also my alumnus and friend. During these arguments over the Bill, I had had several opportunities to be invited to talk to some principals who were strongly against the Bill, and one of them was also my principal back then. I treasure their friendship very much. But it is not due to this that I thought of asking the Secretary to withdraw the Bill.

Madam President, I had this my idea not because my friend — Bishop Joseph ZEN and also my common friend — had once told me that only if the DAB opposed this Bill, we could mend our relations with the Catholic Church and the Bishop would be willing to discuss this issue with us. I did not feel that I should persuade the DAB — my party comrades — to change our stance because of that. However, since the Members and other political parties who advocated strongly for legislation then have also joined the opposition camp now, why should the Government continue to press ahead with the Bill? Should we bother to create another topic for some people in the community harbouring anti-government views to make up stories? In regard to education, we, of course, still have a lot to do. Is it worth being called the "royalist party" by the Government or Members from the Democratic Party who spoke just now or being the target for archery to them? What is the point?

Madam President, I did not propose this to the Secretary eventually. Earlier, the Secretary did ask the DAB with much concern whether we would support the Bill or not. We still firmly told him that we would support the Bill. During this period of time when we were arguing on this issue, we could see various considerations. When some people were using political expediency to replace educational principles by expressing some views which we believe are totally against their conscience, we see in public opinions that there are still a group of people who have long been dedicated to and contributing to education in Hong Kong. They are those who contributed their industry to the implementation of SBM over the past 10 years. They are those who sincerely want to promote this success experience to schools all over the territory. They earnestly hope that, with the passage of this Bill, such a model of management in education can really be implemented in all the schools of Hong Kong. They have not given up, but continued to express their views, air their voices, and these cries are sometimes similar to begging for support. These people include the core members and key persons of the Hong Kong Professional Teachers' Union, and also some respectable friends in the Democratic Party. Unlike their other party members or colleagues, they have not changed their original conviction simply out of the consideration of political expediency.

Therefore, if the Government withdraws the Bill now, this issue will be given up halfway. Who will be pleased? Who will be disappointed? Can we answer to those people working in the education sector who, for all these years, have been working so hard for the education cause of Hong Kong with sincerity, without any other so-called consideration of conspiracy or motives? Simply because of this, Madam President, we should fully support this legislation.

MR ALBERT HO (in Cantonese): Madam President, just now, Mrs Selina CHOW and Mr Jasper TSANG seemed to feel that both sides of the debate today have the shoe on the other foot. However, if we can really understand in depth the principles, values and some very basic convictions upheld by both sides, we will find that the mismatch mentioned by both of them has actually not happened. Indeed, in many aspects, both sides are basically different. In debating the underlying policy of this Bill, two questions need to be answered. Is opposing this Bill tantamount to opposing the democratization of school governance? This is the first question. The second question is: Is sparing no effort to implement and support this Bill tantamount to having the sincerity or ability to

realize democratization of school governance? In fact, only these are the key questions.

The Democratic Party and many Members oppose this Bill. This is definitely not because we oppose democratization of school governance. Many Members already mentioned a moment ago that we were in support of introducing some elected elements into SMCs. This is not a question and our stance has never changed. However, what is the whole package of the Bill? Please look clearly. Can the goal of democratization of school governance be reached by this? This is the core question. Do not tell us that those who give you a loaf of bread is certainly a good person, as this person has to keep you in a cage while you are eating that loaf of bread. Thus, some people can only see someone eating a loaf of bread but cannot see that eater is being kept in a cage. They are really shallow and shortsighted indeed.

Madam President, some people may insist that if there are some elected representatives in a structure, it can be concluded that this structure is definitely democratic and that this target cannot be queried. If this is the case, how can the Secretary and Members who support this Bill answer the questions that I have been raising? Since this is democracy and it is so good to implement democracy in school governance, why can this not be extended to all schools without any discrimination? Why is democracy not needed in schools under the Direct Subsidy Scheme and government schools? Why is it only directed at some aided schools? Can unequal treatment help to reach the goal of democratization?

Secondly, while some elected elements are being added to the SMCs on the one hand, the power of the Government is being expanded to interfere with the internal management of schools on the other. Under the circumstances, even if there are some elected elements, the SMCs may lose their autonomy in management in many aspects. Is that realization of genuine democracy?

Thirdly, if the electoral system is being respected as such, why has political vetting come into the picture? If the Government respects the choices of parents, why is it making use of some political criteria or other criteria that we do not understand or are not aware to veto the outcome of the election? So far, the so-called criterion proposed by the Government is to make sure that the elect is fit and proper. In fact, this criterion can apply to any electoral system.

According to the Government, or if what it says is correct, the Government has to make sure that the person elected has good qualities, good background, and that the voters will not be misled or make wrong choices. Such viewpoint and principle can apply to any electoral system. Then, can this be regarded as democracy?

I have to stress again that the word "democracy" can be borrowed by many people. However, a lot of systems are democratic only on the surface, but anti-democratic in substance. Democratic centralization is one example. As we all know, democracy has been mentioned a lot by the Communist Party. During the early days of establishment of the country, democratic centralization was always mentioned. But was that democracy? I believe that the Mainland also has made a lot of reflection on this. Therefore, we should not think a minuscule of electoral element represents a full realization of democracy. We should not even neglect that the package added to this system actually constitutes an obstacle to genuinely open, autonomous and democratic SBM.

A moment ago, Mr LEUNG Fu-wah repeatedly insisted on his past remarks that a lot of Members were always skeptical about the Government. A lot of efforts made by the Government were thus wasted on many issues, as the democratic camp would still query them anyway. Then I really have to ask: What is wrong with suspicion in the first place? In fact, what is wrong with a community organization, or Members of this Council playing the role of monitoring the Government, questioning with suspicion any expansion, inflation and increase of power? This is precisely our duty. The Government has the responsibility to explain to us that, when it has to increase its own power, the means will be appropriate, reasonable and essential.

Of course, the motive for any act is not everything. If a motive arouses our suspicion, we have to even look more carefully and clearly what are the potential consequences of this motive. We have to be more suspicious, particularly when the Government proposes this legislation relating to the so-called democratization of school governance today. Are the values insisted by it consistent with the pursuit of democracy? I believe that the answer will be a loud resounding "no" from the public. In respect of constitutional development, the deep impression that the Government has always left on the entire community is that the Government does not believe in democracy. The Government only believes in the so-called balanced participation. It believes

that people from various strata should enter the power structure through the so-called protected system in order to support the administration by the Government. In this political review, we have got a very clear picture. Therefore, when the Government launches the reform of the so-called school-based management with such thinking and concept of value, and even stresses that this is for the sake of democracy, on what basis should we believe in the Government?

As some Members said just now, many parents who had been supporting this Bill sincerely hoped to see improvement to school governance. They really believed that the voices of parents in a SMC could render the school governance more enlightened and open. Their persistence was sincere. I believe, I definitely believe this. But the question is, I have to emphasize, do the greatest sincerity and the best intention mean that what they support is good? For what they believe is right, will the means of pursuing that goal be also correct? We cannot combine these two things together, or equate the motive with the means and procedure, and even the consequences eventually. This is absolutely impossible. Good faith and great sincerity cannot guarantee a proper and appropriate procedure, nor can they guarantee that the result will be desirable.

We have studied the Bill comprehensively today. Although we note that there are some areas in this Bill which are in line with our target of seeking improvement, there are more areas which cause us anxieties, will bring about adverse impact, tighten the grip on democratic school governance, and will be the reactionary force to education, progress and reform.

Thus, under the circumstances, the Democratic Party emphasizes again that it is not possible for us to support this Bill. However, the reasons for our opposition to this Bill are not 100% identical with those advanced by the speakers for religious groups. We have to clearly reiterate that we have all along supported the addition of some democratic elements to the SMCs to represent teachers and parents. This has not changed at all. Nevertheless, I have to stress again one point, and that is, do not give us something nice before giving us some sugar-coated poison, as we will not take it.

I so submit.

MR SZETO WAH (in Cantonese): Madam President, some SSBs have claimed that if the Education (Amendment) Bill 2002 (the Bill) is passed, they will institute proceedings in Court, accusing the Bill of violating the Basic Law. Although a number of members of the Bills Committee have raised queries on that, and one of them being myself, the Law Draughtsman of the Government still defended that this was not the case. I find the explanation of the Law Draughtsman not convincing. Of course, this should be judged by the Court ultimately.

Article 141 para 3 of the Basic Law states, "Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services." The critical phrase is "according to their previous practice". Members queried that the approach stipulated in the Bill was not the previous practice. However, the Government insisted that it was. Let us first look at the salient differences between the Bill and the previous practice.

According to the previous practice, schools under the SSBs would be collectively managed by the SSBs, while the SMCs of various schools were organizations under the SSBs. At present, under the Bill, the SMCs of various schools will detach themselves from the SSBs and become independent corporations, enjoying independent legal status. At the same time, schools under the same SSB will no longer be affiliated, but become unrelated, separate and independent organizations. The religious groups form the largest SSBs in Hong Kong, under which there are tens and hundreds of schools. According to the Bill, the SMCs of these schools will become numerous unrelated and independent corporations with legal status. It will be difficult for the religious groups to manage these schools as they did before. These schools, which they have devoted a lot of efforts in the past, have made substantial contribution to society. A lot of them are reputable schools and their academic performance is remarkable and obvious to all. Why should they be changed in such a way?

The Government is holding high the flag of democracy. In the name of "school-based management", it is enabling stakeholders like parents, teachers and alumni/alumnae to participate in school governance. In fact, religious groups did make a two-tier proposal, with the upper tier retaining the power of SSBs, while the lower tier would see participation in school governance by parents, teachers and alumni/alumnae. However, this was rejected by the

Government. It sticks to its own decision and insists that the SMC of each school has to detach itself from the SSB and becomes an independent corporation.

Talking about democratic participation of stakeholders, why can the schools under the Direct Subsidy Scheme (DSS) be exempted from the Bill and do not need to organize incorporated management committees (IMCs)?

Parents of DSS schools have to pay expensive school fees, while the remuneration and conditions of employment of teachers are not protected by the Code of Aid as those of aided schools. Are they not more qualified and have they not more a need for democratic participation in school governance? Why are these schools not governed by the Bill? In recent years, SSBs of what background were given most of the newly built DSS schools to run? If you do notice that, you can see that SSBs are the target of this Bill.

Please forgive my frankness, but I think the Bill is actually covering up a plot. It is to separate, segregate, isolate, infiltrate, seize the power, and finally attain the goal of interference and control. Somebody may say that this is "conspiracy theory". It is true that I really think that this is a conspiracy. Before Antony LEUNG, the former Financial Secretary, took over this position (he was also the leader of the trio), he was the chairman of the Education Commission. And he was exactly the architect of this conspiracy.

When democracy has been completely ruled out in constitutional reform, why is democracy being implemented in education reform? Is that not bizarre? The education reform being implemented for many years has already brought a disaster to the education sector of Hong Kong, and this Bill is going to cause a catastrophe.

The Accountability System for Principal Officials launched two years ago was actually designed by some people to remove what they believed were remnants of the colonial era and then to centralize the powers. Similarly, this Bill is also designed by some people to remove what they believed is the religious power. They want to dominate the education field. This can be regarded as "Article 23 legislation" in education. LI Ruihuan once said that Hong Kong was a purple clay teapot inside which there were a lot of tea stains. And now some people are continually trying to remove the tea stains. But the teapot has been rubbed so hard by them that it is on the verge of broke.

I am afraid the amendment put forward by the democratic camp cannot be passed while the Bill will be carried. However, I believe the struggle against separation, segregation, isolation, infiltration, seizure of power, intervention and control will not stop, but will only grow more vigorous. Some well-intended people who have been confused will wake up.

A moment ago, many Members from the DAB said that some people from the Democratic Party or from the Hong Kong Professional Teachers' Union had changed position. Why is that my name was not mentioned? Can they find my views towards the Bill in the past? I believe they could not find any. Why? Because I am the eldest among them, and I have seen the most. And thus I am the most vigilant one against conspiracy. For some issues, there is a process of exposure. Some people cannot see the entire process, and this is because they are sometimes enchanted. Take this Bill as an example. At the very beginning, the banner of democratic participation was flaunted — on many issues, the Government would flaunt such beautiful banners, and it was even so in education reform — a lot of people may not be able to appreciate its substance in depth. And besides, the provisions of the Bill were not clearly stipulated then. As many of those who oppose the legislation of Article 23 of the Basic said, "The devil is in the details." We could not see the so-called democratization, and the power of the Permanent Secretary was so huge. At that time, there was no specific example to show that the Government could disapprove of a school manager returned even by democratic election. Mr LEUNG Fu-wah mentioned the Bishop today. It is fortunate that he did not mention the name of Bishop Joseph ZEN. And unlike before, he did not say that Bishop ZEN was pathological or was suffering from senile dementia. Today, he mentioned the word "sad" many times. Fortunately, he did not regard him as a pathological believer or suffering from senile dementia again, and thus I do not feel so sad. He also said that we opposed the Bill for the sake of votes. We, of course, want more votes in a democratic election. Will you discard the votes? Only if you can hold fast to your principles and reflect public views that you can obtain votes. It is not a bad thing to strive for votes. It is a crime to buy votes. Many people in the DAB also emphasized that democratic participation was a good thing. In fact, I only have to ask one question: Why are government schools and DSS schools not being governed and not required to set up independent corporations? The schools that Mr YEUNG Yiu-chung and

Mr Jasper TSANG are working for are DSS schools. Why do they not support our proposal that DSS schools should also be subject to the Bill?

PRESIDENT (in Cantonese): Your time is up. Does any other Member wish to speak?

MR CHAN KAM-LAM (in Cantonese): Madam President, Mr SZETO Wah sounded like a veteran and asked why schools under the DSS were not subject to the Bill and why they did not need democratic SBM. Frankly speaking, they are already practising democracy in school management, and thus there is no such a need. If you say that some religious groups or SSBs would like to be exempted from the regulation of the Education (Amendment) Bill 2002, just like DSS schools, they can convert to the system, and can thus realize their own SBM. There is no problem at all. Under the existing regulation, we do not have to tie our hands. If you think that there is 100% such a need, you can convert to the system. Of course, Mr SZETO Wah is also very generous. He said that those who support the Bill are well-intended, but only misled. I am, of course, also well-intended. Actually, I do not understand the Bill very much. All along, it is Mr YEUNG Yiu-chung who, having been in the education profession for a very long period of time, has been explaining to me why we can support the Bill. Today, we are not attacking the Democratic Party for changing or not changing its stance. But the fact is, those advocates are Members from the Democratic Party.

As I could notice, Mr CHEUNG Man-kwong has a difficult time sitting here today. I could not see even a smile on his face, and he was always bulging his cheeks. I understand that he feel very perplexed today, because he has been promoting democratic SBM, but what he has to say today.....

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, do you have a point of order?

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, can I make a clarification?

PRESIDENT (in Cantonese): Yes, you can, but at a later stage. Please sit down first, as you cannot interrupt the speech of another Member. Mr CHAN Kam-lam, please continue.

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I was nearly disrupted and do not know where to resume. *(Laughter)* I know that what he thinks is not what he affects. He said that he is utterly opposed to the Bill, saying that if things go on this way, something will go wrong in schools. However, in fact, he very much supports SBM and has all along been advocating it. Mr Jasper TSANG has also pointed out that in the meetings of the Panel on Education, one could hear them shout themselves hoarse in criticizing the Government for not doing enough in this regard. Therefore, I very much hope that all of us can make introducing improvements to the school management system our point of departure, so that parents, teachers and sponsoring bodies can improve school management gradually and make things better step by step.

Yesterday, we heard some people from parent-teacher associations ask if their power prescribed in the Bill could be enhanced so that they could overturn the missions espoused by SSBs. In fact, their power will not be great enough for them to do so. The point is to allow them to join the SMC of an IMC, so that they can at least represent teachers and parents and express some views. If you say that this is absolute democracy, in fact things have not yet come to such a stage.

Ms Audrey EU has also said that the Bill is not a very democratic piece of legislation, however, in introducing democratized management, there has to be a starting point. Therefore, since we are now beginning to introduce a democratic form of SBM, is it necessary to oppose this so desperately and vehemently?

Mr SZETO Wah said that this was a great conspiracy, that this involved the usurpation and seizure of power, painting things in a very horrible light. However, is the situation like this? This is not the reality. I am very disappointed that the pro-democracy camp and the Democratic Party have used the so-called conspiracy theory as the reason for their opposition to the Bill, instead of picking bones out of an egg, as other Members have said. I would rather you pick some bones out so that you can tell everyone what you object to, rather than saying that a so-called centralized democratic system is not democracy. Such words are meaningless. May I ask the Democratic Party if they are not also implementing a centralized democratic system. You are, are you not? You are also practicing a centralized democratic system. After you have decided on a matter, do you all toe the same line? You do, do you not? The only thing is you just do not tell others, is that right? I simply do not believe that after you have decided to oppose the Bill, Mr CHEUNG Man-kwong can step forth all alone and say that he supports it. Of course he cannot do so, is that right?

Therefore, my personal view is that there is no need to go to the other extreme. It is said that as a point of departure, we must call everything into doubt, and Mr Albert HO also asked what was wrong with calling everything into doubt as a point of departure. There is nothing wrong at all. You can doubt if there is any problem in the Bill that we have to solve. There is nothing wrong at all on this score; however, the problem is that you have called the goal and spirit of the entire Bill into doubt. If we can make rational and constructive suggestions that will improve the Bill, we feel that this kind of doubt is appropriate and reasonable. However, you are calling into doubt a principle that you yourself support. Therefore, I feel that you may be somewhat schizoid.

Many a time, good results can be achieved only through constructive and rational lobbying. It is not true that even with great sincerity, desirable outcomes cannot necessarily be obtained, as Mr Albert HO said. In fact, if this conclusion is applied to the fight for democracy, which the Democratic Party has been talking about all the time, it is giving itself a slap in the face. Therefore, it is in fact not necessary for us to argue too violently about ideological issues. If we can look at it from a pragmatic point of view, then the problem may be easier to solve.

I hope this Bill will not be voted down because of the opposition from the Democratic Party, as this will remain in the records permanently. If in the

future — I do not know when — Mr CHEUNG Man-kwong raises this topic again, he may not be able to justify what he says.

Mr LEUNG Fu-wah made a wrong comment earlier. He said that whatever the Democratic Party was opposed to or supported, in the end it could always make itself appear justified. However, I think that on today's debate subject, the Democratic Party cannot justify itself. Therefore, his comment is wrong.

It is possible that Mr CHEUNG Man-kwong will ask me to clarify some points later. I am very glad to see that he has now managed to crack a smile. I have been paying close attention to him and find that he is having a hard time sitting here today, pulling a long face and wondering why he has been making such remarks and declaring such a position, going back on his own words. Therefore, I have full sympathy for what he is going through in his heart.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong, you can clarify the part of your speech that has been misunderstood.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, I just wish to clarify that it has not been difficult for me, but I wish to thank Mr CHAN Kam-lam for his concern anyway.

PRESIDENT (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I speak on the Second Reading of the Education (Amendment) Bill 2002 (the Bill).

First of all, I would like to thank Ms Cyd HO and members of the Bills Committee. They have spent 16 months and for more than 100 hours deliberating over and over again on the Bill. A total of four hearings have been held and it is only after many strenuous efforts that the scrutiny of the Bill is now complete. Despite the conclusion of the deliberations, members of the Bills Committee still raise a lot of questions about the Bill and this relentless pursuit has been most impressive and valuable.

The Bill seeks to introduce the school-based management (SBM) governance framework in all aided schools. There are two basic aims to SBM. First, it seeks to provide schools with enhanced flexibility and autonomy in managing their own operation and resources according to the needs of their students. Second, it seeks to increase the transparency and accountability in the use of public funds and school operations by providing for a participatory decision-making mechanism whereby all key stakeholders are involved, thus enabling schools to strive in a continuous pursuit of excellence.

Some Members have criticized that the numerous amendments proposed by the Government point to the inadequacies in the Bill. In fact, the various amendments which we will propose at the Committee stage are proof that we have addressed the concerns of Members and the public, and they are definitely not an indication that inadequacies exist in the Bill. Most of the amendments are proposed in response to the demand made by the school sponsoring bodies (SSBs). These include the addition of an alternate SSB school manager, the need for SSB to make the decision when a school wishes to change its mode of subsidy, an SSB may nominate a suitable candidate for principal to the principal selection committee, the incorporated management committee (IMC) of a school must comply with the arrangements made by the SSB with regard to staff deployment matters among the schools sponsored by the same SSB, and so on. The Government has also acceded to the request of the Bills Committee to make the legislative intents clearer and more specific. Some of these have in fact been stated in the Bill. For example, the Bill has provided that an SSB is required to set both the vision and mission for their sponsored schools. However, we have acceded to the request of Members and proposed an amendment to state that the IMCs should formulate the educational policies of a school based on the vision and mission set by the SSB concerned. Many Members have shown strong support for the participation of parents and teachers in school management and these Members think that this is a good thing. But

they ask, "If this is such a good thing, then why force people to do it?" Let me make an analogy. Most people agree that it is a good thing to wear seat belts when riding a car as it can protect their lives. But before the wearing seat belts was made mandatory by law, many people did not and would prefer not to wear seat belts.

Ever since 1991 the Government has been promoting SBM. Schools are encouraged to participate in SBM on a voluntary basis. But the progress has not been satisfactory. The findings of a survey done in 2003 show that only 16% of the schools have teachers or principals involved in school management. In recent years, schools are given greater powers and autonomy in the use of public funds and planning the curricula, so there is a genuine need for the Government to require by way of legislation all aided schools to establish their own independent school management committees (SMCs). Representatives from parents, teachers and alumni should be returned by election, I stress, election, to the SMCs. This would achieve checks and balances which will ensure greater transparency and accountability in school management.

To this end, the then Education Department set up an Advisory Committee on School-based Management (ACSBM) under the Board of Education in 1998 to draw up an SMB framework for aided schools. The ACSBM released the proposed framework in February 2000 and an extensive consultation was conducted among all related sectors including SSBs, school councils, teacher and parent organizations. The Panel on Education of the Legislative Council discussed the various proposals on three occasions and representatives from SSBs were invited to present their views. An overwhelming majority of views gathered displayed an agreement to set up a multi-participatory school governance framework with greater transparency and accountability to balance the interests of all stakeholders. At that time, certain SSBs expressed disagreement but they belonged only to the minority. In 2001, the Government accepted the proposal of the ACSBM and in the subsequent years, discussions were made with the SSBs concerned and the proposal of the ACSBM was revised to allay the worries of SSBs about the devolution of powers. Unfortunately, and despite the Government having made many concessions, certain SSBs are still unimpressed. So the Government submitted the Bill to the Legislative Council in December 2002.

The Bill provides that an IMC shall comprise not more than 60% of SSB managers, plus parent managers and teacher managers returned by election, as

well as alumni managers and independent managers elected or appointed. The aim is to foster participation from all quarters and make use of collective wisdom to enhance SBM and hence the quality of education.

Some SSBs have queried that the inclusion of parents and teachers into the SMCs will make the SMCs political and this will affect the leadership role played by the SSB concerned in the SMC. I believe the SSBs may rest assured because parents and teachers who take part in school management are not vying for power or for other destructive purposes. Therefore, I fail to understand why these SSBs are so concerned. We have consulted people from different sectors and they told me that might be the SSBs were affected by some Members of the Legislative Council who, after being elected, would simply put up opposition for the sake of opposition and engage in destructive activities purely for their own sake. That is why these SSBs are so worried. They are afraid that the election of parents into SMCs may lead to such destructive activities. But we should bear in mind that the common goal of parents and schools is the benefit and well-being of the students.

Parents are the first teachers for their children and they are hence the most influential persons in terms of their children's education. With the enhanced transparency in the Hong Kong Government and school operation, the conditions are ready for a higher-level participation in school affairs by the parents. A quality school-parent partnership and parent participation include the following: communication between the family and the school; parental education; parental guidance to learning; voluntary service provided by parents, parental participation in school management and building a synergy relationship between the school and the community. The aim of the Bill is to establish the statutory status for parental participation in school management.

Teachers are crucial to the fostering of learning in students, for they know best what their students need and the problems they encounter in learning. During the decision-making process in schools, teachers can give advice to the SMC on the strength of their experience and expertise in curriculum development, classroom teaching and student activities, and so on, in order to improve the effectiveness of learning and other related aspects of school management.

Parents are in general supportive of the Bill. They desire a chance to take part in the SMCs and express their views on school development and their children's education, in the hope that the needs of the students can be conveyed and met, leading to better quality and effectiveness in school education. The participation of teachers and parents in school management and their dialogues, discussions and decisions made with other stakeholders will only bring about positive impact and this will never obstruct but facilitate the schools in their efforts of betterment.

The Bill also gives greater protection from civil liability to the IMC managers as supervisors and individual managers are exempted from personal legal liabilities. The IMC as an independent incorporated body shall bear the legal liabilities of the school concerned. The Bill also sets out that a manager shall not incur any civil liability in respect of anything done or omitted to be done by the IMC or if he has acted in good faith in the performance of any function of his office. School managers cannot be sued as individuals. This protection would serve to put the minds of school managers who serve on a voluntary basis at ease.

With respect to criminal liabilities, the final amended version of the Bill provides that unless school managers have clearly shown consent and connivance for any act of contravention, otherwise, even if the school has done anything in contravention of the law, individual managers will not incur any personal criminal liabilities.

There are views that an open and participatory school governance framework needs not be introduced by way of legislation and it would do if SMCs will take the initiative to include parent or teacher representatives. This is far from accurate. For the Bill does not only set out regulations on the operation of SMCs, for example in matters relating to a fair electoral system, the declaration of interests, transparency of accounts, and so on, it also aims to introduce an important change to delineate the legal liabilities of SSBs, IMCs and individual managers. This will give greater legal protection to the school managers.

We propose that the commencement date for the Bill shall be 1 January 2005. In order that the SSBs and the schools will have ample time to prepare fully for the establishment of IMCs, the Bill will make allowance for a transitional period. All aided schools shall submit papers as required by 1 July

2009 for the purpose of setting up IMCs with parent and teacher representatives. In other words, there will be a transitional period of five years from the commencement of the Amendment Ordinance to the deadline for the establishment of IMCs. After the passage of the Bill, we will keep a close watch on its implementation and if any inadequacies or shortcomings are discovered or if serious problems appear in implementation, I undertake that the Government will take the initiative to propose amendments to improve the provisions concerned. In addition, to address the concern of Members, I will propose an amendment to the effect that the Legislative Council may act when necessary to pass a resolution three years after the implementation of the Bill to postpone the deadline for the establishment of IMCs in aided schools for another two years.

In fact, the governance framework for aided schools as proposed in the Bill does not call for any fundamental change to the existing governance framework in these schools. The SSBs will continue to be allotted school campuses and the Government will pay for the construction costs. In addition, the Government will also bear all basic operation expenses of the schools and subsidies will continue to be provided to the SMCs in accordance with the Code of Aid.

On school governance, all along and under the Education Ordinance, schools are run by SMCs, not by SSBs. With the enactment of the Bill, school governance will be taken up by the IMCs and a maximum of 60% of school managers can be appointed by the SSB concerned.

All along, the registration of school managers requires the approval of the Permanent Secretary for the Education and Manpower Bureau (PSEM) and the practice is well-established. Under the existing Education Ordinance, SSBs do not have any formal right to appoint or nominate school managers. But in contrast, the Bill vests the statutory right to nominate and dismiss SSB managers in the SSBs. The SSBs may also appoint supervisors. Although in practice some SSBs will set out the vision and mission of their schools, this role is not provided for under the existing Education Ordinance. But the Bill provides that SSBs have the statutory power to set the vision and mission for their schools.

I am aware that some SSBs which operate a number of schools have a centralized organization to oversee the operation of their schools, formulate general school policies and assume a co-ordination role. The Bill does not

impose any restrictions on the establishment of a centralized organization with similar functions and roles. The statutory functions of an SSB, such as the setting of the vision and mission of the schools, the issue of general instructions to IMCs, overseeing the performance of the IMCs and the issue of binding financial instructions, and so on, can all be done with the help of this centralized organization.

Some SSBs with a religious background are concerned that the commencement of the Amendment Ordinance will lead to a loss of their powers so that they will not be able to preach their faith in their schools, hence rendering their sponsorship of schools meaningless. I must reiterate here that there are no grounds for such concerns. It is because the Bill has set out clearly the functions of SSBs and IMCs and sufficient protection is given to the interests of SSBs as follows:

- (1) The SSB has the right to set out the vision and mission of the school and draft the constitution of the IMC (that is, the SSB will decide all matters concerned);
- (2) The IMC must act in accordance with the mission as set out by the SSB (that is, the IMC cannot do whatever it likes to do);
- (3) The SSB may appoint 60% of the IMC managers and it can also appoint the supervisor (that is, the chairperson of the IMC) and it has the power to dismiss managers;
- (4) Though representatives from teachers and parents (including alternate managers) each take up two seats, they can only have one vote; and
- (5) The SSB may appoint alternate SSB managers to ensure that a quorum is present at each meeting and this serves to protect the fundamental interests of the SSB.

On the other hand, the Bill also provides that the IMC must formulate education policies and run the schools in accordance with the vision and mission of the SSB. The IMC shall also be accountable to the SSB for the performance of the schools. I believe that the above proposals are adequate in enabling the SSB to ensure that the IMC will put into practice the missions and convictions of

the SSB. SSBs will definitely not be bypassed by the IMCs or the Government in any way.

Some SSBs have made some counter-proposals by proposing the setting up of a "School Executive Committee" where members from parents and teachers who share similar convictions with the SSB are appointed by the SSB. This Committee is advisory in nature and it is like the existing arrangement which we know is not satisfactory. The lack of communication between some schools and parents and teachers has led to many disputes and complaints, in detriment to the operation of the schools concerned and the well-being of students. Apart from that, there are criticisms that in the absence of checks and balances, some SSBs have abused their powers and favouritism and even profiteering are reported. The basic aim of the Bill is to affirm the power of participation of parents and teachers in the formulation of school policies by making possible that parents and teachers elected can take part in an SMC which has actual powers to make decisions, instead of being subjects of passive consultation and limited to the discussion of certain specified topics. As parents and teachers know best the needs of students, they should have the right to determine the priorities in the use of resources in a school and monitor its performance. Therefore, we propose all schools should set up their own IMCs with members drawn from the public, including parent and teacher representatives and assume a collective role in school management. It is through this practice that the most effective use of public money is ensured and that the needs of the students be met, thus upgrading teaching and learning effectiveness.

There are also criticisms that the Bill only requires the SSBs to devolve their power while the Education and Manpower Bureau does not devolve its own powers to the schools, and so there is a disguised centralization of powers. This criticism is the exact opposite of the real situation. The Education and Manpower Bureau has since June 2000 issued more than 20 circulars with the effect of devolution of powers, enabling schools to set their own teaching objectives to suit the background, abilities and learning needs of their students and to formulate policies on resource allocation. As a result, the schools are given greater autonomy and flexibility in personnel management, resource deployment, curriculum design and teaching.

Schools may handle matters related to the appointment, acting appointment and promotion of teachers, the employment of supply teachers and the granting of leave to teachers, and so on. With the consent of teachers and parents, the

IMC is empowered to freeze not more than 10% of the establishment of the teaching staff temporarily and it can apply for a grant to hire supply teachers. Schools may use the grant to hire supply teachers or for other purposes such as staff training, procurement of goods and services, and so on. Schools may in each academic year set aside not more than three days for the professional development of their teaching staff. Teachers may on these days take part in school-based professional development activities and school planning work. With clearly defined priorities in educational development objectives, schools may then allocate their resources to fulfil these objectives.

In financial matters, the Government has invested huge amounts of resources to assist schools in implementing SBM and school development. Starting from the school year of 1999-2000, all government and aided schools are given a supplementary grant to meet the extra clerical and administrative support expenses incurred from the implementation of SBM.

Since the school year of 2000-01, the Government has implemented a more flexible funding arrangement called Operating Expenses Block Grant (OEBG). The grant will assist schools in drawing up long-term development strategies. It will combine various non-salary recurrent grants into a block grant and schools are permitted to accumulate unspent amounts of the grant for not more than 12 months. In this way, the OEBG helps schools deploy resources and formulate their budgets flexibly, then making longer-term strategic planning possible. In the same year the Government started to provide schools with a development grant to enable schools to hire services from outside or extra staff outside the approved establishment. These will ease the burden of teachers so that they can devote more time to implement various reform initiatives such as those in school-based curriculum development, improving the language abilities of the students and meeting different and special learning needs.

In order that SBM schools may enjoy greater flexibility in resource management, the Government has since the 2000-01 school year combined the recurrent and non-recurrent grants for furniture and equipment as the Composite Furniture and Equipment Grant and schools are allowed to accumulate the grant to five times of its annual grant amount. Other administrative measures aiming at streamlining include revision of the tender and procurement procedures so that schools may decide at their own initiative to use non-government funds for teaching and school uses as well as the professional development of teachers.

So all these measures show that the Government has been devolving powers to the schools.

Apart from devolution of powers, the Government is obliged to establish some mechanism to require aided schools to enhance the transparency of their decision-making process as they are financed by public money. The aided schools should also be directly accountable to their clients, that is, the parents and the public. In this way the Government is spared of the need to intervene in school management. The Bill therefore prepares the way for the Education and Manpower Bureau to further devolve its powers to the schools.

I must emphasize that the powers vested by the Bill in the PSEM do not exceed the ambit permitted by the existing legislation. The powers vested in the PSEM under the existing Education Ordinance is a kind of emergency switch for our education system and it should only be turned on in urgent and special circumstances. The aim of resorting to such a move is to ensure suitable persons will assume the post of manager so that the school concerned is operated satisfactorily, or that a timely intervention and solution can be effected when the school concerned has run into problems. The PSEM in exercising such power must comply with the principle of natural justice and his decision is subjected to restraints in the form of an appeal mechanism and judicial review. Past records have shown that the Government does not invoke this power readily. For the period from 1997 to the present, the Government has appointed managers to six schools for reasons that the schools concerned were involved or suspected of involving in student abuse, financial confusions, serious disputes among school managers and other illegal activities. As a safeguard against exceptional circumstances, the Government has to reserve the right to intervene in an SMC to ensure that the interests of the students are protected. So with respect to proposals made by some Members to amend certain existing powers of the PSEM and certain wording commonly found in legislation such as "fit and proper" and "not being.....satisfactorily", these are not appropriate in our opinion.

Some SSBs and Members have expressed concern that the formation of IMCs may affect the regulation of SSBs of their schools. In view of this concern and to further protect the power of SSBs in regulating their schools so that the Ordinance can be implemented smoothly, we will propose a number of Committee stage amendments including the following:

- The Legislative Council may pass a resolution after 1 October 2008 but before 1 July 2009 to require SSBs to submit relevant papers not later than 1 July 2011 to establish IMCs. In other words, the Legislative Council may further extend the deadline by two more years if necessary. Given this year is 2004, when will the Ordinance commence if this course of action is taken? It is 2012, that is, eight years from now before this Ordinance shall commence. Can we say that this is too hasty?
- The SSBs may decide on the mode they wish to receive subsidies from the Government.
- IMCs are required to comply with the vision and mission as set out by the related SSBs in formulating the educational policies of schools. (I have talked about this point many times. We are not trying to bypass the SSBs. That is why I am repeating the same point as some Members do not understand it so well. I do not mind being repetitive and so I am saying it once again that we require IMCs to act in accordance with the vision and mission set by the SSBs. As the vision and mission are set by the SSBs themselves, so how can we say that they are being bypassed in the formulation of educational policies in schools?)
- IMCs must run the schools according to the vision and mission as well as general educational policies and objectives as set by the SSB.
- The SSBs may issue guidelines to the IMCs on matters related to fund-raising, the borrowing of money and the entering into contracts not involving public money.
- The SSB has the power to deploy principals and other teaching staff among their sponsored schools.
- The chairperson of an IMC is renamed as the supervisor.
- An IMC may have more than one alternate SSB manager.
- Deleting the provision which states to the effect that if an SSB fails to establish an IMC within the specified time limit, the Government may terminate the sponsoring agreement of the school concerned.

- The SSB may in the constitution provide for an open, fair and transparent process to nominate and select a principal.

Apart from these, we will also propose some amendments of a technical nature for the improvement and clarity of the Bill.

After the enactment of the Bill, the Education and Manpower Bureau will adopt many matching measures to help schools set up IMCs as soon as possible. These include the provision of the following to school managers for their reference: a sample IMC constitution, election guidelines, handbook for school managers and school administration guide. The Education and Manpower Bureau will also hold training programmes and experience sharing sessions for school managers to enhance their understanding of SBM concepts and familiarity with daily school operations. The District School Development Sections of the Education and Manpower Bureau will provide assistance and support to individual schools and solve any technical problems they may encounter in the transitional period for compliance with the requirements of the new legislation. The Education and Manpower Bureau will also work together with the SSBs to solve any common problems which their sponsored schools may have.

To help schools set up IMCs, we will provide legal support services, for example, professional advice to schools and solutions through the Internet to common problems encountered for reference of schools and SSBs. We will also encourage SSBs to invite legal professionals who have a keen interest in education to join IMCs. In addition, we will offer insurance to cover Directors and Officers liability to managers of IMCs to further protect them against legal liabilities.

SBM has gone through extensive consultation and repeated discussions for well over a decade, Madam President, I therefore implore Members to support with their conscience this Bill and the Committee stage amendments which I shall propose later so that we can realize this ideal of an SBM governance framework expeditiously.

Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Education (Amendment) Bill 2002 be read the Second time.

DR RAYMOND HO (in Cantonese): Madam President, I wish to declare an interest. I am a member of the School Management Committee of Ng Yuk Secondary School. Despite it is just a public service, I still wish to declare it.

PRESIDENT (in Cantonese): Fine. Does any other Member wish to make a declaration? Only those who have direct pecuniary interest are required to declare. If no other Members wish to declare, we should continue. I now put the question to you as read out just now. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Ms Cyd HO, Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW,

Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr MA Fung-kwok voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 54 Members present, 34 were in favour of the motion and 19 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Education (Amendment) Bill 2002.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

EDUCATION (AMENDMENT) BILL 2002

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Education (Amendment) Bill 2002.

CLERK (in Cantonese): Clauses 5, 6, 9, 10, 14, 15, 16, 19, 20, 21, 23, 25, 27, 34, 36, 39, 43, 46 and 52 to 57.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 1 to 4, 7, 11, 13, 22, 24, 28, 29, 31, 32, 33, 35, 37, 38, 40, 41, 42, 44, 45, and 48 to 51.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Deputy, I move the deletion of clauses 11 and 40 and the amendments to the other clauses read out just now. I will talk briefly about the reasons for the amendments proposed.

Clause 11 requires that application for registration of manager of IMCs shall be made by the IMC of the school concerned, as this requirement has been set out in other provisions, so we propose that this provision be deleted.

As the proposed section 40AW has set out the procedure for the making of amendments to the constitution of an IMC, so we propose deleting the part in clause 38 and the entire clause 40 on the powers of the PSEM.

In addition, we propose specifying in clause 1 that the commencement date of the Amendment Ordinance is 1 January 2005, instead of being a day to be appointed by the Secretary for Education and Manpower by notice in the Gazette. We propose amending the definition of "supervisor" in the Ordinance and deleting the proposed definitions of "DSS school" and "non-aided school in receipt of Government subsidies", as well as proposing amendments and consequential amendments to the form of address of the Permanent Secretary. We propose adding a definition of "interested persons" to clause 4 and substituting the same in references to "owners, managers, teachers and students" in the clauses.

We propose amending clause 7 to provide that under the relevant clauses, the criterion for criminal liabilities of managers is "consent or connivance" of offences committed by the IMC. The amendment will offer greater protection to the managers. In addition, we propose updating the post titles and other revisions to drafting.

As there may be differences in the number of meetings held by IMCs, we propose to provide in clause 13 that if a manager is absent from all meetings of the IMC in a school year without its consent, instead of the originally proposed three consecutive meetings of the IMC without its consent, the PSEM may cancel the registration of that manager. Under existing regulations, the PSEM shall cancel the registration of a manager if it appears to him that the manager is no longer acceptable as a manager of the school to the majority of managers of the school. We propose that the relevant provisions be amended so that this requirement shall not apply to IMCs. In addition, we have proposed certain technical rules to update clause 13 or which serve a buffer purpose or of a secondary nature.

We propose amending clause 22 on the requirements and provisions on the selection of the principal of an IMC school. Schools are required to form a principal selection committee composed of the SSB, the IMC and other independent persons (if required by the constitution) before the making of nominations. The SSB, IMC or both (subject to requirements of the constitution of the IMC) may nominate a candidate to the principal selection

committee. This will strengthen the role of the SSB in the principal selection process.

We propose amending clause 32 to impose penalties on the supervisor or the IMC or the SMC of a school without IMC where it fails to discharge administrative duties within a specified period of time and to revise the criterion for criminal liabilities for managers to the consent or connivance of the manager in acts committed in contravention of the law by the IMC. The amendment raises the burden of proof on the part of the prosecution and thereby gives greater protection to the managers.

We propose the addition in Schedule 1 under clause 33 a provision on the contracts entered into by schools before the commencement of the Bill and their continuity. The new clause provides that where contracts entered into before the establishment of the IMC concerned may after the formation of the IMC and subject to the consent of the other contracting party, be transferred to the IMC or the SSB concerned. This will ensure that people who have entered into contracts with a school before the establishment of its IMC will not incur losses as a result of the establishment of the IMC. In addition, we also propose revising the interpretation in Schedule 2 under the clause so that the provisions in the Schedule shall also apply to the situation where the IMC of an aided school is dissolved upon the latter's conversion into a DSS school.

Moreover, we also propose amending the provision in Schedule 2 on the requirement to arrange relevant documents to be registered in the Land Registry and to add in Schedule 3 a list of the 13 schools receiving government subsidies which may choose to establish IMCs.

We propose to amend clause 35 to provide that apart from the responsible teachers, workshop instructors and laboratory technicians may also assist in the instruction given by responsible teachers in workshops and laboratories. This is meant to reflect the practical situation in schools.

As the powers of the PSEM in the constitutions of IMCs have been transferred to the proposed section 40AW, so we propose deleting clause 40 and make consequential amendments in clause 41. We propose that clause 44 should provide that in matters relating to the employment or dismissal of employees belonging to the staff establishment or the employment of teachers for a term of not less than six months, approval must be obtained from the majority

of managers of the school. This will prevent the procedures from affecting teachers on temporary or short term employment, avoid adding to the administrative workload of the school and ensure that any decision made to dismiss a teacher is fair and impartial.

We propose amending clause 45 to stipulate that the PSEM may by notice in writing forbid the granting of a holiday on any specified day by a school; and the persons to whom the notice can be served are called the "the management authority" instead of "the supervisor". The change will reflect the responsibilities to be borne by an IMC. We also propose amending clauses 50 and 51 on offences committed by school managers and their penalties to impose greater burden of proof on the prosecution and further protect managers of an IMC. As regulations 19(2), 89(1), 95 and 97(2) have been repealed, the regulations concerned shall not incur any criminal liabilities. In addition, as Members have suggested, we will exempt managers of IMCs from criminal liabilities under certain regulations.

We propose making technical and consequential amendments to the text, drafting, miscellaneous items and updating the form of address of PSEM in clauses 3, 24, 28, 29, 30, 31, 37, 42, 47, 48 and 49.

The above amendments have been discussed in detail in the Bills Committee and support from Members has been gained. I hope Members will support and pass these amendments.

Thank you.

Proposed amendments

Clause 1 (see Annex III)

Clause 2 (see Annex III)

Clause 3 (see Annex III)

Clause 4 (see Annex III)

Clause 7 (see Annex III)

Clause 11 (see Annex III)

Clause 13 (see Annex III)

Clause 22 (see Annex III)

Clause 24 (see Annex III)

Clause 28 (see Annex III)

Clause 29 (see Annex III)

Clause 31 (see Annex III)

Clause 32 (see Annex III)

Clause 33 (see Annex III)

Clause 35 (see Annex III)

Clause 37 (see Annex III)

Clause 38 (see Annex III)

Clause 40 (see Annex III)

Clause 41 (see Annex III)

Clause 42 (see Annex III)

Clause 44 (see Annex III)

Clause 45 (see Annex III)

Clause 48 (see Annex III)

Clause 49 (see Annex III)

Clause 50 (see Annex III)

Clause 51 (see Annex III)

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, on the appointment and dismissal of teaching staff, the Bill proposes that only the dismissal of any teacher from a teacher post of not less than 12 months shall be approved by a majority of the IMC of the school. However, in my opinion, the dismissal of teaching staff must follow the procedures as stipulated in the Code of Aid and at the same time, determined by a majority vote of all the members of the IMC of that school as recommended by the Audit Commission. Nevertheless, it is inappropriate for the Bill to set 12 months as the time limit. I suggest that all teaching staff in the establishment and those employed for a term of not less than six months should be protected. I therefore welcome the amendment proposed by the Government.

Following the commencement of the Amendment Ordinance, the legal liabilities originally shouldered by the school supervisors and SSB would be transferred to the IMC and school managers in future. After taking up the post of school managers, teachers and parents are liable to various legal liabilities in discharging their duties. Currently, the Government has amended the provisions to protect managers from liabilities in respect of acts done in good faith. Furthermore, the Bill also provides that any claim for civil liability would be enforced against an IMC to the exclusion of individual school managers. This is a reasonable change. In addition, I also urge the Administration to honour its undertaking of including professional indemnity and directors and officers liability under the Block Insurance Policy, so that teachers and managers can discharge their duties effectively without worrying about the consequence.

Madam Deputy, in the course of deliberations, I have pointed out that most of the criminal offence provisions under section 87 of the Education Ordinance and regulation 101 of the Education Regulations are outdated and absurd. For instance, it is indeed ridiculous and harsh to impose criminal sanctions on a school supervisor or a manager of an IMC school for failure to carry out certain administrative functions within a specified time limit, such as the late filing of documents. Also, under the Regulations, the total number of pupils allowed on any verandah or balcony at any time shall not be greater than one for every 2 sq m, and managers and principals contravening such requirement will be liable to one-year imprisonment or a fine of \$50,000. As a result, fire drills or even pupils queuing up in the course of leaving school may constitute a breach. Other examples include: no person shall in any school

premises make any collection among any pupils of a school without the permission of the Permanent Secretary (PSEM); no entrance to or exit from any school premises shall be locked at any time when any pupil who does not reside in the school premises is in the school premises; and no instruction shall be given by any school after 9.30 pm. Any person contravenes the above regulations is liable to one-year imprisonment. In view of this, I requested the Administration to review once again the offences and penalties, so as not to mix up the administrative functions with criminal liabilities. The Education and Manpower Bureau eventually accepted these suggestions, and some unreasonable penalties will be repealed or decriminalized, so that teachers and parents will not be easily caught by the law in discharging their manager duties. This is the outcome of careful deliberation, but not fault finding.

Most importantly, to manifest the spirit of SBM, the powers of the PSEM must be restrained. Talking about devolution, the Administration in fact only devolves the power of the SSBs, breaking them up into parts. While an IMC set up by the school is independent of the governance of the SSB, it is unreasonable for the Government to retain the various controlling powers left over from the colonial era, breaking up the administration of a school into several parts and holding the statutory power of ordering about. While requiring a so-called democratization of school management, I hope the Government will take a lead in devolving powers, so as to implement SBM in a genuine and pluralistic manner.

Thank you, Madam Deputy.

MS CYD HO (in Cantonese): Madam Deputy, I rise to speak to make it clear that I find these amendments worth supporting because they are the outcomes of Members' thorough and lengthy discussions in the Bills Committee. Frankly speaking, I would have wanted to thank the authorities for accepting Members' views, but since the Secretary denied that these were loopholes at the Second Reading debate of the Bill, I must point out that these are definitely loopholes. The existence of these loopholes must not be allowed because they will become dangerous traps of criminal liability for parent managers and alumni managers.

Without this Bill, or if the requirements of the Bill are not mandatory, no one will face any danger of falling into these traps. However, if the

requirements are mandatory, resulting in all these loopholes, people will be "plunged into an inferno". I am therefore very grateful to Mr CHEUNG Man-kwong for working with everybody during the scrutiny of the Bill to pick out all the fishbones that may get stuck in the throat and cause fatality.

Madam Deputy, I shall concentrate on two issues only. The first issue is connected with clause 33, which deals with the continuity of contracts signed by a school before the commencement of the Bill. We can see that there are many contractors and service providers working for a school, including contractors of school uniform, school coaches and the tuckshop. According to the original provisions — I mean, the original provisions — these contracts shall be transferred to the IMC following the commencement of the Bill, and everything must begin afresh. But we understand that in the case of a tuckshop, a tuckshop in particular, the contract will usually be longer than one year because the operator needs to make more investments, more investments in fixtures, than a school coach operator, a school uniform contractor, and so on. But what will happen if a school now says that it will have to set up an IMC and informs its contractors that it will have to establish an IMC a year later? There are some existing contracts, but under the original Amendment Bill, no person shall be entitled to compensation as a result of the commencement of the Bill. As we all know, the economy is now in poor shape, so if existing contracts are to be brushed aside and new ones signed, contractors may be forced to accept lower prices. A tuckshop contractor may have made his investments on the basis of certain cost calculations, so if he is suddenly forced to continue operation at a lower price, his interests will be damaged. In view of this problem, the Government hastened to conduct a questionnaire survey covering 11 schools, and the findings showed that in the case of more than nine, the remaining contract tenure with the tuckshop contractor was still as long as two years or more. Therefore, despite the relevant amendments, I hope that the Administration will still take serious follow-up actions in case there was any complaint in the future. What is more, the example of this clause shows us that when enacting any legislation, we must never confine ourselves to the collective perspective. Madam Deputy, your political party is also very concerned about the business environment. In regard to tuckshop contractors, we must not ignore the interests of these small investors on the ground that we are just talking about democratic participation in school management. Madam Deputy, therefore, these are definitely loopholes.

Besides, I also wish to discuss "consent or connivance", which is a newly introduced concept. As pointed out by Mr CHEUNG Man-kwong, there are many traps of criminal liability in section 87 of the Education Ordinance and regulation 101 of the Education Regulations. Members have actually saved Mr YEUNG Yiu-chung because he is a school principal, and in this capacity, he is obligated, among other things, to maintain all his school premises "in a clean and sanitary condition". "In a clean and sanitary condition" is all that is said, so I really do not know how the provision can be enforced. If there is any violation of this provision, that is, if the premises of a school are not maintained in a clean and sanitary condition, the school principal may be sentenced to imprisonment for one year. Well, I suppose one can say that this is not too much, for if the school principal has accumulated eight months of vacation leave, he will be able to cope! And, the maximum fine is merely \$250,000! Therefore, to the Honourable YEUNG Yiu-chung, who is also a school principal, I must say that we never tried to stall the scrutiny of the Bill; we simply wanted to pick out the fishbones. Well, we Members know one another, so we can even exchange thanks for spotting all these problem provisions. But we do not know many of the affected school principals. If these provisions are passed, they will be vulnerable to many traps of criminal liability.

What is more, an offence is committed if the space occupied by one pupil on any roof playground, verandah or balcony is less than 2 sq m in area, and school managers are also subject to this requirement. If this Amendment Bill is passed and enforced on a mandatory basis, should parent managers and alumni managers belonging to IMCs all line up along school verandahs during each recess to check whether the area occupied by each pupil is no less than 2 sq m? If the authorities conduct daily inspections in schools to enforce this provision, it is certain that they can arrest many people every time. And, the offences are criminal in nature, punishable by a fine at level 5 and imprisonment of one year. Since there is the possibility of parole, if the offender has accumulated eight months of leave, he will be able to cope.

Another provision is that no pupil shall be allowed on any roof playground, verandah or balcony unless under the direct supervision of a teacher. Members do not see any problems with the inclusion of roof playgrounds, because it is only reasonable to require the presence of a teacher when pupils play football in these places during recess. But the inclusion of verandahs may cause a serious headache. If a pupil asks for permission to go to the washroom during class,

should the teacher accompany him all the way? The Institute of Education does not say anything on this, has never taught that when a pupil raises his hand to ask for permission to go to the washroom, the teacher must go with him, or else parent managers and alumni managers will once again be implicated for an offence, a criminal offence. Madam Deputy, these requirements are truly outdated and excessive, are downright loopholes in law. Let me repeat that these are loopholes because despite the impossibility of enforcement, they have been in existence all along, meaning that everybody is in fact breaking the law every day. This has nothing to do with civil disobedience, though — civil disobedience involves deliberate contravention. But in the present case, everybody is breaking the law without realizing it. It is fortunate that these laws are not enforced; if they are, the situation will be terrible. Following our thorough discussions on these loopholes, following 110 hours of discussions during which the Secretary was never present, we have finally fixed them. I am therefore very grateful to members of the Bills Committee and also the legal advisers of both sides for scrutinizing the clauses with us.

Finally, I wish to point out that the Department of Justice has incorporated "consent and connivance" into the provisions on the establishment of IMCs. This means that the threshold of criminal prosecution has been raised very substantially, requiring the production of proof of the awareness, consent and connivance of the accused to constitute a criminal offence. We think that this is far more acceptable than the original clauses. However, we also think that regulations 101 and 102 of the Education Regulations and section 87 of the Education Ordinance are still in many ways unreasonable and outdated, so during the Second Reading debate on the Bill, we request the Panel on Education in the next Legislative Session to urge the authorities to conduct a comprehensive review of the Education Ordinance.

Madam Deputy, I can see that the Secretary, being a politically appointed official, is so rich and colourful in the language he uses. Honestly, I have never dozed off when listening to him. But I must add that the selling of government policies must be based on facts. Falsehoods will only make people lose their confidence in and respect for the Secretary.

Thank you, Madam Deputy.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak? If not, I now call upon the Secretary for Education and Manpower to speak again. Secretary for Education and Manpower, you do not wish to speak, do you?

(The Secretary for Education and Manpower indicated that he did not wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

DEPUTY CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

DEPUTY CHAIRMAN (in Cantonese): As the amendments to clauses 11 and 40, which deal with deletion, have been passed, these clauses are deleted from the Bill.

CLERK (in Cantonese): Clauses 1 to 4, 7, 13, 22, 24, 28, 29, 31, 32, 33, 35, 37, 38, 41, 42, 44, 45 and 48 to 51 as amended.

DEPUTY CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

DEPUTY CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

DEPUTY CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 8.

MS EMILY LAU (in Cantonese): Madam Deputy, I move the amendment to clause 8, as set out in the paper circularized to Members. Madam Deputy, this amendment seeks to amend the grounds for cancelling the registration or provisional registration of schools under section 22 of the Education Ordinance.

Madam Deputy, as I already pointed out during the Second Reading debate, the Education Ordinance is actually a highly colonial piece of legislation, and the amendment proposed now seeks to amend just a very small part of it. There are many other areas which require examination and studies. Why have I specifically proposed this amendment? The reason is that the section in question involves a power vested in the Permanent Secretary. As Members can notice, the heading of the section is "Grounds for cancellation of registration or provisional registration of school", which is a very important matter.

As pointed out by Ms Cyd HO, the Ordinance is embedded with fishbones which must all be removed. However, due to the time constraint, we have not been able to study the whole of it in detail. But still, I can spot some parts which are extremely unreasonable. Which parts? Section 22(1)(e), for example. One of the grounds for cancelling the registration or provisional registration of a school under this section reads "if it appears to the Permanent Secretary that the management committee is not managing the school satisfactorily, or that the education of the pupils is not being promoted in a proper manner". How wide is such a power!

Suppose the Permanent Secretary wakes up early one morning and suddenly says that she is not satisfied with a certain school, what are we going to do? We did hold some discussions on whether it was possible to work out some

objective criteria, but in the end, we concluded that it was not possible. We think that this provision is too wide in scope. How can such a power be vested in the Permanent Secretary? Many other provisions of the Ordinance already empower the Permanent Secretary to exercise various powers under certain circumstances, and we can only tolerate the situation. But now they also want to insert section 22(1)(e).

Madam Deputy, my proposal is very straightforward: the simple deletion of "if it appears to the Permanent Secretary that the management committee is not managing the school satisfactorily, or that the education of the pupils is not being promoted in a proper manner" and its replacement by "there is a serious problem with or crisis in school management, which leads to chaos in school administration and makes the school unable to operate properly". I think this is much clearer. And, I must add that the cancellation of a school's registration is a very serious matter after all.

Actually, the authorities already enjoy very great powers under the existing section 22, but they still want to insert section 22(1)(e), which vests such an extensive power in the Permanent Secretary. Another point is that we simply do not know what specific circumstances will give rise to her dissatisfaction. Maybe, the Secretary can say a few words on this later on, for he opposes my amendment. What explanation is there? What is meant by "not managing the school satisfactorily"? And, "the education of the pupils is not being promoted in a proper manner"? What is all this about?

My amendment is very clear, and its standard, that is, its "threshold", is also very high. Madam Deputy, later on, I shall move several more amendments, but I may not offer any lengthy explanation anymore, because all these amendments are based on the same principle, that is, the adoption of a clearer and higher "threshold". The reason for this is that they are also about the exercise of very great powers. The present case, for example, involves the very great power of cancelling the registration of a school, and similarly, the amendments I am going to move later on also involve the exercise of very huge powers.

I hope that Members can stay behind to listen to the debate — many Members are not here now, but they should have stayed behind to listen to colleagues' remarks. They should realize that there is no ground to substantiate the vesting of such a power in the Permanent Secretary. The Secretary must

give us an account of those circumstances under which the Permanent Secretary will not be satisfied. How can the Permanent Secretary be so lightly allowed to exercise such a power? I hope that Members can support my amendment.

Proposed amendment

Clause 8 (see Annex III)

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, I rise to speak in support of Ms Emily LAU's amendment. "If it appears to the Permanent Secretary that the management committee is not managing the school satisfactorily" is an expression verging on the rule of man because the interpretation of "not satisfactorily" actually varies from person to person. But we must bear in mind that the person to be involved shall be the Permanent Secretary, and he or she shall be empowered to cancel the registration or provisional registration of a school. This is really an excessively vague power that can lead to terrible consequences. Therefore, Ms Emily LAU has proposed an amendment, whereby the power of cancelling the registration or provisional registration of a school shall be exercised only when "there is a serious problem with or crisis in school management, which leads to chaos in school administration and makes the school unable to operate properly". I think this can raise the threshold, and ensure that the criteria governing the exercise of this power will not vary from one Permanent Secretary to another, basically because very concrete and relevant grounds must be put forward before it can be proved that a school is really caught in a serious crisis which leads to chaos in school administration and renders it unable to operate properly.

(THE CHAIRMAN resumed the Chair)

Madam Chairman, the amendment of Ms Emily LAU can serve to remedy the problem of vesting excessive powers in the Permanent Secretary left over from the colonial era. And, as a matter of fact, one major direction of all our amendments is to bring in a right track, a reasonable and acceptable scope for the powers vested in the Permanent Secretary. I therefore support the amendment of Ms Emily LAU.

Another point is that very often, when opposing Members' amendments or Ms Emily LAU's amendments, the Government will invariably say, "We must reserve this power, so that the Permanent Secretary may exercise it if necessary. This is meant largely as an emergency switch." But Ms Emily LAU's amendment is nothing but also an emergency switch. The only difference is that it is an emergency switch meant for genuine dangers, not one which can be lightly activated when just one single person is not satisfied.

Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, I rise to speak in support of Ms Emily LAU's amendment. The rationale behind this amendment is to introduce an objective criterion for something marked by a heavy overtone of the rule of man. Actually, similar amendments will come after this. For this reason, I shall first express my views on this rationale in general. It is indeed very hard to define "not satisfactorily".

We have held so many meetings. I suppose the Secretary probably does not find the situation satisfactory. We do not either. But what can be done?

CHAIRMAN (in Cantonese): The Secretary indicates that all is satisfactory.

MS CYD HO (in Cantonese): I do not think it is satisfactory at all — but I must thank the Secretary for saying so anyway. Hence, Madam Chairman, we can see that the definition of "not satisfactorily" actually varies from person to person. People's perceptions will also be different, so it is very difficult to draw up any definition. For this reason, I must thank Ms Emily LAU for proposing to insert an objective criterion.

Actually, the two Members who have just delivered their remarks have already discussed the rule of man and the rule of law, so instead of dwelling further on these points, I think I may perhaps ask another question, one which I hope the Secretary can answer. Over the past eight months, our select committee on SARS has been working on its report — now that the report has been released, we can discuss the related issues. In the process, we noticed that under the law, the Director of Health is also vested with certain administrative

powers. But when she gave evidence in the hearings, the former Director of Health remarked that before the exercise of these powers, the policy support of the Bureau Director would be required, and that she would not exercise these powers on her own. Therefore, may I ask the Secretary how he looks at the many powers in the Bill that the Permanent Secretary may exercise once it is deemed that things have not be satisfactorily handled? Madam Chairman, I wish you can relay this question to the Secretary, because the Secretary and the Permanent Secretary are after all two different persons, and what is more, no one probably knows who will succeed the two present incumbents five years later.

Therefore, I hope that Ms Emily LAU's amendment can be carried. I also hope that when the Secretary gives his reply later on, he can tell us whether they have any internal criteria on defining "not satisfactorily". If there is already a definition, are there any ways to ensure that such a definition will not be interpreted too differently by different persons? Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR YEUNG YIU-CHUNG (in Cantonese): Madam Chairman, I rise to speak in opposition to Ms Emily LAU's amendment. The five amendments proposed by Ms Emily LAU, namely, the amendments to clauses 8, 18 and 30 of the Bill and the addition of new clauses 13A and 28A, are all about the expression "not satisfactorily". We are of the view that this expression is in itself already an objective criterion. It does not mean "not satisfactorily to the Permanent Secretary". If this was the real intent of this clause, why had it not been written as "if the Permanent Secretary is not satisfied with the management of the school by the management committee"? It is obvious that "not satisfactorily" actually means "not satisfactorily according to the perception of ordinary people", and the perception of ordinary people shall be the standard and criterion. Actually, the legal expression "not satisfactorily" is found not only in the Education Ordinance but also in the Criminal Procedure Ordinance and the Abattoirs Regulation, showing that it is an expression quite widely used in law.

In the case of the Education Ordinance, this expression has been in use for many years without causing any major problems. And, the Government has

never abused it either. In regard to Ms Emily LAU's proposal to delete this expression and substitute "there is a serious problem with or crisis in school management", the DAB is worried that the proposed expression, being more restrictive, may cause even greater disputes. Since the Government must then wait until there is chaos in a school, until the situation gets out of control, before it can step in and intervene in the management of the school, before the Permanent Secretary can direct that remedial measures be taken to cancel the registration of its managers and appoint others in their place, for example, I am sure that members of the public and society at large will definitely lash out at the Government for its tardiness of response.

Ms LAU frequently criticizes the SAR Government for being slow in action. But if Ms LAU's amendment is carried, the Government's intervention in school management will not only be slow but also extremely slow. Just imagine what will happen if the Permanent Secretary, even as the highest financial controller, is barred from stepping in as soon as a school funded by taxpayers starts to develop problems but must wait until the problems have culminated into a crisis and the school has failed even to operate properly. Well, even if the school can still be saved, it will be largely "crippled".

I guess Ms LAU's amendment is based on her fear that the Permanent Secretary may abuse the power and intervene in school management indiscriminately. If she really thinks that way, I must say she is a bit over-worried. The reason is that even if the Government really abuses its powers, it will still be held accountable to the Legislative Council. What is more, let us not forget that the Government has never ever abused the relevant provision though it has been in existence all the time. Therefore, I hope that Ms LAU can have more confidence in the Government and the Legislative Council.

We maintain that Ms LAU's amendment will only tie the hands of the Government, rendering it unable to intervene in school management in a timely fashion and in response to different practical circumstances. Therefore, we oppose Ms LAU's amendment. We maintain that the expression "not satisfactorily" should be retained. I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I wish to say a few words in response to Mr YEUNG Yiu-chung's remarks. When it comes to "not satisfactorily", the people in question are of course society in general, but the person who is going to decide whether a school is being managed "not satisfactorily", that is, the person responsible for activating the whole mechanism, is the Permanent Secretary. The Permanent Secretary, not the man in the street or every one of us, is going to determine whether a school is being managed satisfactorily. This is precisely the subject of our criticisms; the Permanent Secretary will determine whether a school is being run satisfactorily, but different Permanent Secretaries will have different views — it is all a matter of opinion, in other words. Ms Emily LAU's proposal seeks to replace "not satisfactorily" by crises and chaos in defining the criteria governing intervention. It is true that this will tie the hands of the Permanent Secretary, but to be precise, I must say that only the hands of power abuse will be tied. When a school is managed by an IMC, by people whom the Permanent Secretary deems to have been reasonably selected, he or she naturally must not intervene so lightly. In that case, what is so wrong with tying his or her hands? Therefore, I maintain that Ms Emily LAU's amendment is appropriate, in line with the practical circumstances and grounds warranting government intervention.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Education and Manpower to speak.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, the Government opposes this amendment because the proposal made by Ms Emily LAU fails to encompass all possible scenarios, such as when the school managers do not care about school management and though the situation has not deteriorated into a serious problem or crisis which leads or has led to chaos in school administration and makes or has made the school unable to operate properly, the performance of the students may be very unsatisfactory. In comparison, the original provision carries a broader meaning

and is flexible, hence it can better protect student interest. Our aim is after all the protection of student interest.

As to the argument put forward by Members that this would lead to the "rule of man", this is not true at all. Now the school inspectors of the Education and Manpower Bureau may visit any school and as they inspect the school they will assess school operations in accordance with the Performance Indicators for Hong Kong Schools (Evidence of Performance) which is widely accepted by the education sector. As they assess school operation, they will determine if the school is being run satisfactorily or not. So preserving words like "not managing the school satisfactorily" and "the education of the pupils is not being promoted in a proper manner" is only meant to provide a kind of emergency switch which will only be turned on in emergencies and exceptional circumstances. This power has never been abused by the PSEM and even when the PSEM is about to exercise such power, discussions will be made with the Director of Bureau who is ultimately accountable. So the exercise of this power, if exercised, will be in line with the principle of natural justice and the decision is also subject to checking in the form of an appeal mechanism and judicial review. He cannot just do what he likes and he has to do it right. Members should therefore not worry about that.

Owing to the above reasons, the Government opposes this amendment and we call upon Members to oppose this amendment moved by Ms Emily LAU.

CHAIRMAN (in Cantonese): Ms Emily LAU, do you wish to speak again?

MS EMILY LAU (in Cantonese): Madam Chairman, I am not surprised that the Secretary does not support my amendment. But I do think that the Secretary must tell members of the public one thing. The Permanent Secretary is vested with such power, and no matter what "people" the Secretary and Mr YEUNG Yiu-chung are talking about, the Secretary must tell us whether the Permanent Secretary is going to ask the man in the street whether he or she should make such a decision. Does the Secretary expect the Permanent Secretary to do so?

What is more, I was actually talking about the need for a high threshold, Madam Chairman. I do not know whether the Secretary had made a slip of the tongue, but he did talk about emergency and special circumstances just now. Well, I am precisely talking about those circumstances, instead of any intervention whenever anything is considered not satisfactory. We think that there are many similar situations in the Bill, and I have simply picked out one or two small pieces of fishbone.

Secretary, I think you should really tell members of the public, "We will keep abreast of the times, and the powers left over from the colonial past should not be retained." As for whether or not we do not want to see any intervention from the Permanent Secretary, the answer is of course no, Madam Chairman. The spirit behind SBM is that once school managers are selected, they should be left to run their respective schools.

A moment ago, the Secretary talked about school managers who had never participated in school management. There are always bound to be such school managers, but does the Secretary agree that they should first be asked to do so? They should first be asked to handle the problems of their schools, and the authorities should not step in at too early a time.

This leads to the question of how high the threshold of intervention should be. The threshold should be that the Government may step in only when there is a serious problem or crisis, leading to chaos in school administration and making it impossible for a school to operate normally.

Therefore, it must be realized that criticisms and belated government responses are not so much the central issues here. Quite the contrary, if the Government steps in even when there is just a minor problem, a very serious situation may result. The debate can in fact show how Members look at the Government's exercise of its powers.

Should the Government step in even when there is just a minor problem? Naturally, we do not wish to see this. The point is that once a SMC is formed, if there are any managers who do not do anything, the rest should really make some extra efforts.

I think that school management should basically be dealt with by the SMC, and if problems worsen, or the situation gets out of control, or anything serious

occurs, the Permanent Secretary may exercise his or her power. I know that this and other amendments proposed by me will not be passed, Madam Chairman, but we still wish to highlight the problems for discussions. What I mean is that once the Permanent Secretary is given such a power, I simply do not know when he or she will exercise it, nor do I know how many people will be consulted before the power is exercised. It is a great pity that, in the new millennium, such an outdated clause can still be found in the existing Education Ordinance.

MS CYD HO (in Cantonese): Madam Chairman, the Secretary mentioned earlier that because there was the appeal mechanism, the power of the Permanent Secretary would be restricted. Therefore, I have to explain this appeal mechanism here. Under the Education Ordinance, a person can lodge an appeal if he disagrees with the ruling made or measures taken by the Permanent Secretary. At present, appeals are handled by the Appeal Boards Panel, members of which include teachers, school principals and members of the community, and so on. Regarding the appeals relating to the terms of employment or employment conditions of teachers handled by this Appeal Boards Panel, our amendment is to have a teacher representative on the Panel; as regards the handling of appeals by SSBs, there is no special requirement. There is no particular technicality here, only that if SSBs lose in their appeals to the Panel, they can of course appeal again, and their cases will be handled by the Chief Executive in Council. Assuming that the Panel rules in favour of the SSBs, they of course need not appeal again to the Chief Executive in Council because the ruling is in their favour. Therefore, only the Permanent Secretary will appeal further, but the Secretary is a member of the Executive Council. As there are many arguments over this Bill, if in future, a person has to appeal and must do so in accordance with the procedure, I would like the Secretary to undertake that he will then excuse himself to avoid a conflict in role.

Another possibility is the SSBs winning the case, and the Permanent Secretary loses, then the SSBs will naturally not appeal. Madam President, let me repeat. There are two possibilities. Appeals lodged with the Appeal Boards Panel will either win or lose. If the SSBs win, they will not appeal, only the Permanent Secretary will appeal further, and he has the help from the

Secretary in the Executive Council. Therefore, just now, I asked the Secretary to definitely excuse himself when handling the appeal cases. Conversely, if the SSBs lose and lodge an appeal, that will also be handled by the Chief Executive in Council, and the Secretary is also a member of the Executive Council. Thus, with regard to this mechanism, I think the SSBs will only stand to lose since there are still so many arguments over this Bill.

Of course, colleagues of the Department of Justice will tell us applications can be made for judicial review in respect of any matter, but the judicial review procedure only deals with whether the procedure of making the decision is fair, the Court may not handle the content. Madam Chairman, therefore, I would like the Secretary to undertake that when the appeal mechanism comes to this procedure, the Secretary will excuse himself to avoid conflict of role. Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Madam Chairman, we have discussed the point just raised by Ms Cyd HO in the Bills Committee meeting. At that time, we also pointed out that this manner of handling an appeal would not be fair, because if the SSBs are appealing to the Chief Executive in Council, they are not present and will therefore not know what is happening. However, the other party includes the Secretary who will be present. Therefore, our point is if there is such a procedure for appeal, the arrangement must be seen to be fair. Nonetheless, the answer we got then was "not sure", because things such as the procedure for the Executive Council are like a black hole, they are not sure about it and thus, the authorities cannot give any assurance. Under such circumstances, how can people's mind be put at ease? Since the Secretary is present today, I believe he will also understand that the party arguing with him only wants to be done justice. Therefore, would the Secretary please take this opportunity to explain that we need not worry because this appeal procedure is fair to all parties?

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, when I spoke this morning, I mentioned democracy and non-democracy. In fact, I did mention that this Bill was full of contradictions. It is because when we talk about democracy, in those representatives who are returned by democratic

election, we should all the more trust them. When we trust them, powers should be devolved to them to dispose of business, while the powers of the Government should be restrained or reduced. However, the problem lies with the Government not making any attempt to reduce its power in many provisions, but giving the Permanent Secretary a lot of power instead. The so-called threshold proposed by Ms Emily LAU does not mean to remove all the "teeth" of the Government. This is not the case. The "teeth" will still be returned to the Government, only that not so many "teeth" will be given. This threshold is thus proposed to render the stipulation stricter. However, why is a stricter stipulation not acceptable? I find this really too much and is incomprehensible. While the Secretary talks about democratization here today, he has to be more open, transparent, and to respect others' SBM, respect the operation of IMCs. Why is the Secretary, at this moment, still holding the imperial sword that enables him to do whatever he wants? Is it completely contrary to the so-called principles of democracy, openness and transparency mentioned very often by the Government? Is it not self-contradicting?

Besides, I want to talk a bit more about the appeal mechanism mentioned by Ms Cyd HO. That appeal mechanism is actually not any appeal mechanism *per se*. Why is it not an appeal mechanism? It is because the Permanent Secretary can make a ruling. If someone feels aggrieved, he can appeal and the case will be handled by the Chief Executive in Council. As we all know, that Appeal Board Panel is appointed by the Government. Those members of the Panel appear to be very independent. But in fact, since the Panel is appointed by the Government, to a certain extent, it has already lost its independence. Although it is said that after a ruling is made, those who feel aggrieved can appeal to the Chief Executive in Council, as Ms Cyd HO also mentioned just now, the Secretary is one of the members of the Executive Council. Besides, the ruling made is not based on legislation or other viewpoints, but on the principle of administration. Therefore, the chances of the final conclusion of the appeal answering the aspiration, stance or basic requirement of SSBs are very very small.

We have also mentioned a recent case related to Mr FUNG Ka-keung, a proposed manager of the SMC of a school. In this unsuccessful case, he is not able to register as a school manager. Even if he appeals, he will definitely lose. Worse still, even the case is taken to Court, he is unable to appeal against this

decision, but can only seek judicial review on procedures prior to the ruling or on administrative matters. He cannot petition for revocation of the decision. Hence, the so-called emphasis on the operation of SBM is nothing more than lip service. Frankly speaking, the power is always placed in the hands of the Government. When it wants to "slash", it can "slash". It can do whatever it wants. In my opinion, this runs contrary to the original spirit of legislation. Therefore, I support Ms Emily LAU's proposal.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Secretary for Education and Manpower, do you want to speak again?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): The discussion is getting very interesting indeed, for I can see that Members are lashing attacks time and again. At first, they said that the PSEM would act wilfully and he would "rule at his whims", that is, not based on any justifiable grounds and he just does things as he likes. Then I explained that things were not like that. For we have school inspectors and they will monitor the operations of schools according to the rules and regulations to determine if they are satisfactory. Then we said that irrespective of the PSEM's decision, there was an appeal mechanism in place. But then the Members said that would not work for in lodging the appeals the Secretary for Education and Manpower was also a Member of the Executive Council and so how could this be fair and impartial. Conversely, if I am no longer a Member of the Executive Council, will Ms Emily LAU withdraw this proposed provision? No, of course not. She will pursue her attack relentlessly. If I say, okay, now I promise not to invoke this provision, will Ms LAU withdraw this provision? No. Then what can I say?

I have put it clearly that though the Secretary for Education and Manpower is a Member of the Executive Council, the advice of the Secretary for Justice will be sought whenever we handle an appeal and we will strive to be fair and impartial.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Emily LAU to clause 8 be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr WONG Sing-chi voted for the amendment.

Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, four were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 12 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): Madam Chairman, I move that in the event of further divisions being claimed in respect of the other clauses of the Education (Amendment) Bill 2002 or any amendments thereto, the Committee do proceed to each of such divisions after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the various clauses of the Education (Amendment) Bill 2002 or any amendments thereto, the Committee do proceed to each of such divisions after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 18.

CHAIRMAN (in Cantonese): Both the Secretary for Education and Manpower and Ms Emily LAU have separately given notice to move amendments to clause 18.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Education and Manpower to move his amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendment to clause 18.

Clause 18(a) of the Education (Amendment) Bill 2002 (the Bill) stipulates that if the composition of the IMC is such that the school is not likely to be managed satisfactorily; or the education of the pupils of the school is not likely to be promoted in a proper manner; or that any provision of this Ordinance is being or has been contravened in respect of a school, the PSEM may appoint one or more person as manager of the school concerned. Some members think that the composition of an IMC has been clearly stipulated in the Bill and so there should not be any cause to make the management of a school unsatisfactory or that the education of the pupils of that school is not likely to be promoted in a proper manner. Moreover, even if a contravention has been made of this Ordinance, it should not directly constitute any ground to appoint managers. We have accepted this view of members and proposed to delete clause 18(a).

I hope Members will support the passage of this amendment.

Proposed amendment

Clause 18 (see Annex III)

CHAIRMAN (in Cantonese): I will call upon Ms Emily LAU to speak on the amendment moved by the Secretary for Education and Manpower as well as her proposed amendment. However, no amendment may be moved by Ms Emily LAU at this stage.

MS EMILY LAU (in Cantonese): Madam Chairman, since I have already spoken at length on my views, I understand that Members do not wish to hear a long speech from me.

My main objective is to avoid the rule of man under the Permanent Secretary. Despite the Secretary's dislike, I still wish to raise this point. What I propose are some objective criteria specifying that the Permanent Secretary may appoint managers for a school only when there is a serious problem with or crisis in school management, which leads to chaos in school administration and makes the school unable to operate properly. Besides, I am also of the view that the number of managers so appointed should not exceed two. I hope that Members can understand that the arguments advanced by me in speaking on the previous clause also apply to the clause now under consideration.

I hope Members can render me their support.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Education and Manpower as well as Ms Emily LAU's proposed amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I rise to speak in support of Ms Emily LAU's amendment. I do not wish to repeat my views, and I only wish to say a few words on Ms Emily LAU's opinions. She is of the view that even when a school faces a crisis or chaos in administration, the Permanent Secretary should not appoint more than two school managers. Why should there be such a limit? An analogy to a soccer match can illustrate the rationale involved. If the team on the losing side can deploy whatever number of substitutes to take part in a match, it may well outnumber the better team and turn imminent defeat into victory. This is also the case with a SMC. In general, assuming that there are 11 members on a SMC and there is a 5:6 voting outcome on a certain question, then after the Permanent Secretary's appointment of two more managers who are obligated by law to vote according to the

direction of the former, the voting outcome may change to 7:6. In fact, the effect of this limit is already very large.

Meanwhile, the most important mission of the school managers appointed by the Permanent Secretary is to explain the position and attitude of the Government, with a view to influencing other school managers, so that they will accept the Government's proposals, thus bringing the school back to the right track. But if the number of school managers appointed by the Permanent Secretary is subject to no limit, a situation of excessive power mentioned by us may result. Simply by appointing a suitable number of managers to make up for the shortfall in votes, the Permanent Secretary will be able to change the voting outcome. This may lead to "foul play". I therefore conclude that the limit of two managers is the most important part of Ms Emily LAU's amendment. For this reason, I will stand by Ms Emily LAU.

DR YEUNG SUM (in Cantonese): Madam Chairman, I rise to speak in support of Ms Emily LAU's amendment for its objectiveness and higher threshold. As Members are aware, the Chief Executive, the Legislative Council and Principal Officials were not elected by universal suffrage. Given the enormous power of the Permanent Secretary, it is indeed worrying that his political influence will infiltrate all schools. A strong impact will be produced on educational institutions even if he causally or indiscriminately exerts his influence. Therefore, the higher the threshold, the lesser the chances of abuse. For instance, the requirement that the Permanent Secretary can exercise his power only when there is a serious problem with or crisis in school management is more objective and the threshold thus set is higher. In other words, this solution is better than none, given that the existing institution is not entirely satisfactory. Therefore, I speak in support of Ms Emily LAU's amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Ms Emily LAU, do you wish to speak again?

(Ms Emily LAU indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak again?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, as I said before, the amendment proposed by Ms Emily LAU does not encompass all the scenarios, for example, the management being devoid of any enterprising spirit, teachers in low morale, students lacking motivation to learn and having behavioural problems, and so on. However, these do not mean that the school is unable to operate properly. The meaning of the proposed amendment is too restrictive and it prevents the authorities from intervening at an initial stage when the problem first crops up and it is only when the problem has become very serious, and even to such an extent that it has aggravated into a situation which gets out of control before any action can be taken. By comparison, the original provision carries a broader meaning, it is more flexible and hence can better protect the interests of the students — and I stress — the interests of the students.

I also oppose Ms Emily LAU's proposal to require the PSEM to appoint not more than two persons as school managers, for speaking from past experience, the PSEM is obliged to appoint professionals from various sectors, independent members of the public and representatives from different government departments to SMCs in view of the nature and seriousness of the problems to help the school concerned tackle these problems. The PSEM will exercise such power with prudence and he cannot appoint too many persons on one occasion. Moreover, when the operation of the school has resumed normal, these appointed managers will have to leave. So we do not think that there is any need to set an upper limit to the number of managers and past records have shown that the Government will never invoke such power readily.

From 1997 to the present, the Government has appointed managers into the SMCs of six schools for reasons I have mentioned, that is, in cases where students are abused, financial confusions occurred and unlawful acts committed. To protect the interests of the school as well as those of the students, the Government has to reserve the right to intervene into an SMC as and when necessary.

Owing to the above reasons, the Government opposes the amendment proposed by Ms Emily LAU and I also call upon Members to oppose the amendment proposed by Ms Emily LAU. Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Madam Chairman, this topic is now revisited again though it was mentioned by the Secretary earlier. I really want to know the reasons contributing to unsatisfactory school management. According to the Secretary, it is partly because some people are reluctant to strive for self-improvement or they are unwilling to learn. I am afraid this is a common phenomenon in many schools. Honestly, it will be most frightening if managers may be appointed to SMCs whenever this happens. Can anyone tell me which schools do not have such cases? Even Mr YEUNG Yiu-chung once told me that some students, even teachers, in his school were reluctant to strive for self-improvement. Some school principals are also reluctant to strive for self-improvement and improve school management. This is why I find this threshold too low. Madam Chairman, it is necessary to raise the threshold. I have often said that SBM is intended to allow schools to manage themselves and let managers manage their own schools. It can never be the case that managers should be appointed to SMCs when someone is reluctant to strive for self-improvement and unwilling to learn.

Moreover, why should it be not more than two managers? Secretary, you are not supposed to take over a school. Managers have already enjoyed huge power. The appointment of one manager into a SMC is enough to serve the purpose. The spirit of SBM we have been striving to establish will be completely destroyed should an entire team of managers be allowed to march into a school. Therefore, the more the Secretary talks, the more worried we will become. I hope colleagues can support my amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Education and Manpower's amendment to clause 18, I remind Members once again that if the Secretary for Education and Manpower's amendment is agreed, Ms Emily LAU may not move her amendment to clause 18.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

DR DAVID CHU (in Cantonese): I have pressed the wrong button.

CHAIRMAN (in Cantonese): There is no hurry. Have you pressed the button? You may make correction if you have pressed the wrong button. Is it still possible for correction to be made?

DR DAVID CHU (in Cantonese): No, impossible.

CHAIRMAN (in Cantonese): You should be able to do it, please try again. Does it work? Try again. Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr WONG Sing-chi and Mr Frederick FUNG voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 27 were in favour of the amendment and 17 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Education and Manpower has been passed, Ms Emily LAU may not move her amendment, for it is inconsistent with the decision already taken by the Committee.

CLERK (in Cantonese): Clause 18 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 18 stands part of the Bill.

CHAIRMAN (in Cantonese): I now put the question as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 30.

CHAIRMAN (in Cantonese): Both Ms Emily LAU and the Secretary for Education and Manpower have separately given notice to move amendments to clause 30.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. In accordance with the Rules of Procedure, I will first call upon Ms Emily LAU to move her amendment.

MS EMILY LAU (in Cantonese): Madam Chairman, I move the amendment to clause 30. The clause is related to the power of the Permanent Secretary to close a school or give direction in cases of danger or misconduct.

Madam Chairman, I seek to amend subsection (1)(b) for the reason similar to the one given by me just now. In other words, the Permanent Secretary may order school closure if it appears to him that the conduct of the managers, teachers or pupils of a school is or has been unsatisfactory. I must repeat that this is far too general. Despite Mr YEUNG Yiu-chung's remark that the relevant judgement is made by people in general, not just the Permanent Secretary, I still feel that it will be excessive should reluctance to strive for self-improvement, as mentioned by the Secretary just now, be used as a criterion

for ordering school closure. Madam Chairman, this is why I have proposed in my amendment that the Permanent Secretary may exercise such power only when the conduct of the managers, teachers or pupils of a school causes a serious problem with or crisis in school management which leads to chaos in school administration and makes the school unable to operate properly. I hope colleagues can support my amendment.

Proposed amendment

Clause 30 (see Annex III)

CHAIRMAN (in Cantonese): I will call upon the Secretary for Education and Manpower to speak on the amendment moved by Ms Emily LAU as well as his own proposed amendment. However, no amendment may be moved by the Secretary for Education and Manpower at this stage.

If the Committee has agreed to Ms Emily LAU's amendment, the Secretary for Education and Manpower may not move his amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, the amendment proposed by Ms Emily LAU is similar to the amendment proposed by her earlier. I wish to reiterate here that the wording of the amendment proposed by Ms Emily LAU does not encompass all the possible scenarios. By comparison, the original provision carries a broader meaning and it is flexible. It can give formal protection to student interest. Therefore, I urge Members to oppose the amendment proposed by Ms Emily LAU.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by Ms Emily LAU as well as the Secretary for Education and Manpower's proposed amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

DR YEUNG SUM (in Cantonese): Madam Chairman, I rise to speak in support of Ms Emily LAU's amendment. Very often, the application of an ordinance

depends on specific circumstances. The current situation is that the Permanent Secretary may order a school to close. School closure is more than the appointment of managers. It means that a school will be closed, or close to being taken over by the Government. Therefore, should the Permanent Secretary be given the power to close a school by just making an order, then the threshold must be set high.

However, the Government's amendment is concerned only with the situation in which the conduct of the managers, teachers or pupils of a school is or has been unsatisfactory. Given that reluctance to learn or make improvement, and many other conduct, may be considered unsatisfactory, an arbitrary standard can easily apply. The threshold defined by Ms Emily LAU is less obscure for a school will not be closed just because the conduct of a certain person is not very satisfactory or the examination results of a school is not too good. According to Ms Emily LAU's proposal, a school will be ordered to close only when there is a serious problem or crisis. The amendments proposed by Ms LAU to several provisions just now were actually the same. The current situation is more special in the sense that we are concerned about the Permanent Secretary's power to order school closure, not just how many people or managers can be appointed. I hope Members can consider if they can support Ms Emily LAU's amendment insofar as this point is concerned.

Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, I will be pinpointing the circumstances under which a school will be closed. It is understandable that some other provisions will make it clear that the authorities will have the power to close a building in case of danger. For instance, certain premises will have to be closed in case of dangerous slopes or landslides, and no one will be allowed to enter the premises in the interest of public safety. This is totally understandable for there will be immediate risks to lives. Under this provision, however, a school can be closed if the conduct of the managers, teachers or pupils of a school is or has been unsatisfactory. Actually, a manager can and should be replaced if his conduct is found to be unsatisfactory. Some other provisions should be able to deal with this, though they were only amended a moment ago. Even if Ms Emily LAU's amendment, which has our support, is not passed, the power to replace managers at any time has already existed. Actually, the Government can consider invalidating the registration of teachers found to be unsatisfactory or terminating their employment. There are

ways to deal with it. Similarly, the Government may resort to such measures as class suspension or expulsion if the conduct of a pupil is found to be unsatisfactory. So, under what circumstances will a school be ordered to close? Madam Chairman, the most serious consequence of school closure is that a group of pupils and teachers will have no place to assemble for they can never return to their school.

Why should they face school closure given that their conduct is not criminal and has not worsened to such an extent that replacement, invalidation, termination, expulsion, and so on, are called for? In spite of the questions posed in different manners during the scrutiny of the Bill, no answers were given. The only inference we can make is that a school will have to be closed when a political ideology is found to be spreading in the school, and the Education and Manpower Bureau does not want this ideology which is different from that of the Government to exist. In other words, a school can be closed in cases of student unrest. All this shows that such power can be exercised even when the conduct is still not considered criminal, even when no student has been expelled and no teacher dismissed. It is thus evident that this power is actually intended to prohibit the spreading of certain ideologies.

We have been told by representatives from the Education and Manpower Bureau that this provision was introduced as an amendment back in 1971. I believe Members can still recall that the 1967 riots occurred towards the end of the '60s. School principals were detained by the then British Hong Kong Government without trial and subsequently imprisoned for two to three years without trial. Their schools were ordered to close too. This colonial draconian law was used for prohibiting freedom of thinking by the colonial government. May I ask those organizations which were suppressed at that time their justifications for they might vote in support of it today?

MR JAMES TO (in Cantonese): Madam Chairman, I rise to speak in support of Ms Emily LAU's amendment. The most important part of her amendment actually lies in the last sentence "....., which leads to chaos in school administration and makes the school unable to operate properly". This means that a school will be required to close only in this situation. Compared to the provisions considered reasonable by the Government, the provision "the conduct of the managers, teachers or pupils of a school causes or has caused....." merely concerns time. What matters most is the word "satisfactorily". In other

words, the Government can order a school to close when the conduct of the managers, teachers or pupils of the school is found to be unsatisfactory. The standard and requirement are indeed very low (low in terms of rhetoric).

Some officials in the Education Department have tried to convince us that the internal requirement of the Government is extremely high. While the Government's internal requirement might be high, the requirement written in black and white is exceedingly low. The difference actually lies in the rule of man and the rule of law. Such power can be exercised with such a low written requirement. No one can deny that such power can be exercised whenever such a low requirement is met. If this is the case, there will be no checks and balances. I am extremely shocked to find that such power is statutory. I would like to urge the Secretary or other colleagues who have the experience of scrutinizing similar wordings that might trigger the exercise of certain powers to look at them again. In particular, would those colleagues with a legal background examine whether they are satisfied that a reasonable balance has been struck? Please bear in mind that I am talking about putting the most reasonable balance in black and white, not other restraints at the back. I can say that there is none because this is what is stated in the law.

My second argument is that it will not be proportional if meeting such a low requirement can lead to such a serious consequence as school closure. In other words, it would be more proportional for a school to be closed in the event of chaos in school administration and failure to operate properly (this is the last standard), as specified by Ms Emily LAU. It will be entirely not proportional if a school can be ordered to close once the conduct of a pupil, a teacher or a manager of a school is found to be unsatisfactory.

Of course, it will be quite difficult to win the case in Court if this is so written in the law. Despite the Secretary's remark that "legitimacy" will be considered and that "there are other procedural or legal checks and balances, despite the low requirement", it will still be very difficult to exercise checks and balances. I have no idea whether this is the last or the first time the Secretary hears an argument like this, in any case, can he make a timely turn before it is too late? If he thinks that Ms Emily LAU's amendment, namely "....., which leads to chaos in school administration and makes the school unable to operate properly", suffice to entail the exercise of such a serious power as school closure, as contained in the provision, to prevent something from happening, rather than simply stating that a school will be closed when it is found to be

"unsatisfactory" (I hope the Secretary can really listen to me), I hope he can grasp this very last chance or even give us some advice to make Members believe that he will immediately amend his argument when it is found to be problematic.

This is very important. Should the Secretary really need more time, he can request the Chairman to adjourn the meeting and try as far as possible to consult legal advice or the suggestions of his colleagues in the relevant Policy Bureaux, though the adjournment might last only 10 minutes. In doing so, our confidence in the ability of the Secretary to truly appreciate concrete, objective arguments will be boosted. This is my sincere hope.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, this is a provision that combined the rule of man with politics. This is the rule of man because as I have said, if the Permanent Secretary finds anything unsatisfactory, it already constitutes a condition for closing a school.

What do I mean by politics? In fact, the Ordinance has imposed control on three types of people, the first being managers, the second, teachers and the third, students. Under the existing education system, many channels are available to managers, teachers and students for them to deal with problems. What is the major purpose of this piece of legislation? When it was enacted in the '70s, in view of the riots in 1967, it was asked, "What if some of the managers, teachers and students rose against the Government?" Since the authorities could not cite any good reason to close a school, therefore, the reason of "being unsatisfactory" is used indiscriminately to close a school by treating a group of people in a school as being collectively anti-Government.

However, those should now be bygone days and the Government should not tighten the legislation so that the unsatisfactory conduct of any student will be sufficient ground for school closure. Please note the word "any", which means that it does not have to be a group of people. Originally, when this piece of legislation was drafted, the concern was that a group of people or a large group of managers, teachers and students would rise together against the Government. However, eventually, after the law came into being, it turned out that if any one student makes the Permanent Secretary feel dissatisfied, a school can already be closed. Does this not give one the impression that the legislation drawn up was far too lax and arbitrary, that it has no bounds or limits? It can be invoked no matter what the circumstances are. Of course, the Secretary will tell us later,

"How would our Permanent Secretary do such a thing? It will not be invoked if there is no crisis. Our internal threshold is set very high." If the internal threshold is really so high, then why is this piece of legislation drafted in a way that is even more colonial than it was in the colonial era? Why is it written in such a way that a school can be closed if the conduct of any student is unsatisfactory? There is no such need.

The scope of this piece of legislation is too wide, so much so that it is all encompassing and this is the rule of man in addition to the rule of law. On this issue, a serious conflict has emerged. When the Secretary looked at this piece of legislation, or when he heard about or looked at the provisions in this piece of legislation, he did not understand why Members considered it unreasonable. This is precisely the reason. This is also why Ms Emily LAU felt it necessary to make amendments. In fact, the word "any" can also be found in Ms Emily LAU's amendment, however, she has narrowed the scope in the latter part so that if someone wants to foment trouble, then he has to muddy the waters so much that a crisis is eventually created in the school, chaos reigns in its administration and the school cannot function normally before the authorities can step in. That is to say, the situation in the school will be used as the objective basis rather than whether the Permanent Secretary finds it satisfactory. Can Members say which basis is more reasonable? Which one conforms better to the spirit of modern-day legislation? Which one reveals nostalgia for the power of the colonial times? The answer is very clear.

MR MARTIN LEE (in Cantonese): Madam Chairman, I believe the whole world will be stunned should a foreign reporter, who happens to be sitting here, see that even a provision like this cannot be amended. Are you not joking, Secretary? If LIAN Yi-zheng were a manager of a school and had this piece of legislation come into effect, he would have stirred up a serious trouble for taking to the streets on 1 July? Would his act lead to the closure of the school? What is wrong with the Secretary? I wonder if he can stand up and confirm this. Mr LIAN would certainly make someone dissatisfied should he, as a manager of a school, make such a silly decision as to take to the streets on 1 July. It would be even worse if he made a similar attempt again — he would then match the criterion of "is not or has not been found satisfactory". Will the school be ordered to close because the "imperial officials in the north", Mr TUNG, the Chief Executive or Mr LAU Siu-kai is dissatisfied? What is wrong with the Secretary? How are you going to face your elder brother?

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Dr YEUNG Sum, for the second time.

DR YEUNG SUM (in Cantonese): Madam Chairman, I will be very brief, because this is the second time I speak. Members will find in this document that the amendments proposed by Ms Emily LAU last time and this are the same — a serious crisis has led to chaos in school administration and made the school unable to operate properly. As pointed out by me earlier, the present case is different. We are talking about school closure, not the appointment of two managers, as remarked by Mr CHEUNG Man-kwong earlier. School closure is a very serious matter. May I call upon incumbent Members who are sitting here in this Chamber or those watching the television outside consider whether this part can be supported even though they support the entire Bill introduced by the Government? I dare say Members preparing to support this part of the Bill are insulting their own wisdom. Can Members really support the Government's proposal of ordering a school to close when the conduct of a pupil, manager or teacher of the school "is or has been found unsatisfactory"?

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr Martin LEE, for the second time.

MR MARTIN LEE (in Cantonese): Yes, Madam Chairman. I have forgotten to say that I believe I have to mail this provision to the Professors at the Cambridge University for a look.

CHAIRMAN (in Cantonese): Which Members wish to speak? None? Secretary for Education and Manpower, do you intend to speak again?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I am very glad to have heard Members expressing their views. As many Members have not been here, so perhaps I should say once again what is meant by "not.....satisfactorily", for some Members have queried this point.

We in Hong Kong are very lucky, and unlike some foreign places, we enjoy a great degree of freedom. Our schools are monitored by school inspectors who will assess, according to the Performance Indicators for Hong Kong Schools (Evidence of Performance) which is widely accepted in the education sector, whether or not a school is managed satisfactorily. So the preservation of words like "not.....satisfactorily" and "the education of the pupils of the school is not likely to be promoted in a proper manner" are only meant to provide an emergency switch to be turned on only when it is absolutely necessary, such as in some emergencies, or when an emergency has not arisen but there is a likelihood that the situation will develop into an emergency. And such power has all along never been abused by the PSEM. Even if the PSEM wishes to exercise this power, he should comply with the requirements of natural justice and his decision will be subject to, I repeat, the checking by an appeal mechanism and judicial review. And as I did not do so last time, let me point out now that the power and the act are all monitored by the Legislative Council and the Commissioner for Administrative Complaints (now known as The Ombudsman). For this reason, Members should not be overly worried.

Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): I would like to thank colleagues for speaking in support of my amendment. They are perfectly right that the power conferred has kept escalating. Not only has the situation kept worsening, anything can be unsatisfactory too. This time, it is about school closure. I am very glad to hear Mr Martin LEE mention Cambridge. I believe his remark has made the heart of Vice-Chancellor LI (no, he used to be a vice-chancellor but is now a Director of Bureau) sink, right?

I believe the Secretary's former colleagues and classmates in Cambridge will find it quite shocking on hearing Prof LI proposing these provisions. It was mentioned by a colleague earlier that these provisions have existed for a reason that no longer exists. Now the Secretary is trying to get this Council involved. Madam Chairman, the Secretary told us not to worry about giving the Permanent Secretary such an enormous power because this Council would play a monitoring role. May I ask if this means the Permanent Secretary will consult us before deciding to close a school? What did the Secretary mean by monitoring?

Given the extent of the power and the obscurity of the threshold, we hope the provisions can be made clearer to give people a clear idea of what circumstances are considered serious before the power can be exercised. However, the Secretary told us not to take it seriously, the power would not be used indiscriminately, and so on. In the course of enacting legislation, we cannot enact an ordinance and then warn people against using it indiscriminately, for someone may use it after it is passed into law. Moreover, we must not enact law considered inappropriate. Therefore, the Secretary's remark is not convincing at all. I have no idea whether some colleagues will find it convincing; however, they have not made any noise so far. Perhaps Members are not willing to take the trouble to debate for it is now well past three o'clock; otherwise, the debate will go on even after twelve o'clock tonight.

However, such power must not be retained. We have already been silent about what has already existed and have taken no action to remove it. However, this provision is about possible dangers. Of course, the Secretary can go ahead with his plan in disregard of everything. However, I really have no idea how the Secretary can give the enlightened an explanation.

We feel most sorry that some colleagues have stopped talking for they simply do not bother to take part in the debate. It is really an eye-opener that some Members consider the provision providing for school closure on the ground of the unsatisfactory conduct of certain people merits support.

(Mr Martin LEE indicated his wish to speak)

CHAIRMAN (in Cantonese): Mr Martin LEE, before you speak, I hope to remind you of not raising matters irrelevant to this amendment.

MR MARTIN LEE (in Cantonese): Madam Chairman, they are definitely related, because the Bill will affect the reputation of Hong Kong. The Secretary says that the Legislative Council may play a monitoring role. But how? The Legislative Council is about to pass the Bill — at the Secretary's request. Once the Bill is passed, will he still admit any inadequacies when anything happens?

He will simply say that it is just an isolated incident which will not occur again. That way, he will get away once again. I did not put it quite so appropriately just now. I said I would mail the provisions to Cambridge. But I should have said I would also mail them to Oxford because the "buddies" over there in Cambridge may not want to pass any criticisms.....

CHAIRMAN (in Cantonese): Mr Martin LEE, that was what I meant. You talked about Cambridge and Oxford, but it really has nothing to do with secondary schools, the topic under discussion now. I hope you can focus on secondary schools again.

MR MARTIN LEE (in Cantonese): Madam Chairman, secondary school students may enter Cambridge and Oxford in the future. *(Laughter)*

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, the main object of the Bill is about IMCs. This forms the underlying spirit of the whole Bill. But very strangely, we are not talking only about school managers but also teachers and even pupils. This is really baffling because the intent of the Bill is the democratization of school management, and the essence of this is the participation of more parents and teachers in SMCs. This is the spirit of the Bill itself, but the problem is that in drawing up the Bill, the Government has brushed aside others' views and simply put the old colonial laws together, throwing teachers, pupils, and so on, all into the "frying pan", as if they were part of the recipe. But there is something very strange. When it comes to the democratization of school management, why is the participation of pupils always considered an obstacle whenever anything unsatisfactory happens? This is really baffling.

There can be only one explanation, the one also mentioned by Ms Cyd HO, and I very much agree with her. Is there anything to do with what happened in the 1960s and 1970s, when many students showed a great concern about social affairs and distributed leaflets as well as organized student unions and various activities on their own? What the colonial Government feared most at that time were activities of this nature, so the Ordinance was enacted in response.

Is our society still fearful of these activities? If yes, why then are we talking about democracy and student participation in social affairs? To put it simply, Madam Chairman, as I have been pointing out since this morning, it will really be extremely odd to pass this Bill. It is said on the one hand that some things must be done, but on the other, attempts to do such things are opposed or restricted. What then is the purpose of enacting the Bill? It is utterly incomprehensible. I mean, I really fail to see why. It is claimed on the one hand that there must be democracy and participation. But why are restrictions imposed on the other? What actually do all these claims mean?

I therefore cannot understand what is going on. Were Ms Emily LAU and Ms Cyd HO really correct in asking their questions? Has the Secretary himself examined and read all the provisions to see whether they are still appropriate to the current situation of Hong Kong? We have been talking about lots of things today. What are these things? We all say that there must be public participation in social affairs. But the attempts to do such things are impeded by one obstacle after another. And, even the participation of our youngsters, of our students, is to be restricted. I do not know whether the Chairman is aware that student unions have already be set up in many schools, and that these students have been showing an increasing concern about social affairs. One day, if these students express some views to the dislike of the Government, is it going to close the schools concerned simply on the ground that their management is not satisfactory? Does the Government intend to retain this power as the last safeguard, as a Sword of Imperial Sanction, so as to deprive students even of their right or chance of participating in social affairs? I will therefore support Ms Emily LAU's proposal.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I wish to clarify one point and that is, this provision has always existed and it is not true to say that we make it up now to close schools. I am only proposing an amendment to update and change the word "Director" in clause 30 to "Permanent Secretary", just as simple as that.

MS EMILY LAU (in Cantonese): Madam Chairman, we of course know that the provision is not anything recently invented by the Secretary. But because the box has already been opened, Members now have the chance to see what are inside. Had these problems not been apparent, Madam Chairman, you would not have permitted us to propose amendments. These problems can be spotted even at a glance. The Secretary says that there is only a very minor amendment. But we still think that the provision is extremely harsh; it was very harsh, is very harsh and will be very harsh. For this reason, some colleagues hope that things can be brought back to the right track, so that we can move ahead with the times. I hope the Secretary can also see this point and render his support, because in the current context of Hong Kong, such a provision is really unnecessary. Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, this clause is actually about IMCs, and we are not trying deliberately to open the box because it is made very clear in this clause that all school managers are covered, including those of IMCs. When the authorities were lobbying for the Bill, they said that with the establishment of IMCs, there would be the participation of parents, teachers, alumni and others in society, and that even if inspectors from the Education and Manpower Bureau could not spot any problems in the schools, the participation of these managers would still serve to ensure good performance to a certain extent. But if this system and this policy are really so good, if the participation of such managers can really ensure quality management, then how will any school managers, including those appointed under the policy promoted by the Government, still commit any acts that are or have been unsatisfactory? Madam Chairman, the authorities are actually contradicting themselves. The threshold must not be so blurred, so low.

The Secretary just now referred to the laziness and lack of initiative of students, saying that all this was considered signs of unsatisfactory school management. But when the Secretary was the Vice-Chancellor of The Chinese University of Hong Kong, were all his students very hard working? Were all his teaching staff full of initiative? If yes, why did he still dismiss his staff? Why was there still downsizing? Why were students still expelled? These all contradict his argument, Madam Chairman.

Therefore, I hope the Secretary can consider all these points again. Some Members wondered whether this was the first time that the Secretary ever heard of this clause. I believe the answer is probably yes, because the Secretary was not present when we examined this clause. I therefore really hope that the Secretary can reconsider the whole thing. Although these draconian laws were enacted by the colonial Government in the past, although these laws were not made by the Secretary himself, they must be dealt with as they are related to the implementation of these policies. I call upon the Secretary to think twice. Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, the question is that although there is now a chance to turn a draconian law handed down from the past into a good one, somebody is still reluctant to grasp this opportunity, unwilling to leverage on others' efforts. Others have already made all the improvements, so he can actually conclude the whole matter by saying a simple thank you. He can simply ask his apologists to support the amended clause. That way, the problem can be solved. But he is just reluctant to do so. Madam Chairman, he is just reluctant to do so. Others have drafted the amendment for him, have prepared the meal for him, so to speak, but he just will not eat. What is he still waiting for? The fault has now become his.

If Members had not raised all these problems, all would be fine, and the British, not the Secretary, should be rightly blamed for the mistake. But he has been told of the problems. If he still has any conscience, if he is wise at all, how can he fail to see that there was a mistake in the past? If he realizes that there was a mistake in the past, he should correct it now, and our country will feel very proud of him. Why does he refuse to do so?

CHAIRMAN (in Cantonese): Before I put to you the question on Ms Emily LAU's amendment to clause 30, I would remind Members again that if Ms Emily LAU's amendment is agreed, the Secretary for Education and Manpower may not move his amendment to clause 30.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 30, moved by Ms Emily LAU, be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, four were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 14 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, you may move your amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that clause 30 be amended.

Proposed amendment

Clause 30 (see Annex III)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN

Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr WONG Sing-chi and Mr Frederick FUNG voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 26 were in favour of the amendment and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CLERK (in Cantonese): Clause 30 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 12.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that clause 12 on section 30 of the principal Ordinance be amended. We have accepted a suggestion from Members to set the lower age limit for school managers to 18 years of age and to state that people over 70 years of age applying to be school managers must produce a medical certificate

certifying that the applicant is physically fit to perform the functions of a school manager. We also propose an amendment on updating the form of address of the Permanent Secretary. I hope Members can support and pass these amendments.

Proposed amendment

Clause 12 (see Annex III)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

MS CYD HO (in Cantonese): Madam Chairman, sorry, I have to look for my script. Madam Chairman, I move a further amendment to clause 12, which is to add new sub-section (1B) to section 30 of the principal Ordinance. Madam Chairman, my amendment is mainly about the power of the Permanent Secretary to refuse the registration of an elected school manager. In the existing section, the concept of "a fit and proper person" is applied as a ground for refusing the registration of a school manager, so it can be seen that this ground for refusal has

long existed in the Ordinance, in section 30(1)(b) of the existing Education Ordinance, which is largely a piece of colonial legislation.

In the past, school managers were appointed by sponsoring bodies, Madam Chairman, so we did agree to a certain extent that since school managers were not elected but appointed by SSBs, it might not be entirely so bad to have such a vetting criterion. But now, with the establishment of IMCs, there will be three elected managers, namely the teacher manager, the parent manager and the alumni manager. If this particular section is not amended, then when these managers apply for registration after being elected, the Permanent Secretary may well apply the concept of "a fit and proper person" to refuse their registration as managers.

Today, many Members have referred to the case of Mr Christopher FUNG. Mr Christopher FUNG contravened the Public Order Ordinance for his participation in an unapproved assembly and civil disobedience (We have always criticized the Ordinance for its political vetting nature). The refusal to register him as a school manager on the ground of such contravention is yet another form of political vetting. My point is that, as in the case of other elections in which members of the public can take part, the wish of voters in school manager elections should also be regarded as supreme. Since we are now talking about democratic participation and the democratization of school management (we do take the words of the Secretary very seriously), then why may the Permanent Secretary apply this concept and refuse to register a manager after he or she has been elected?

Therefore, we have been criticizing that the democratization to be effected by this clause can at best be "half-baked" and "bird cage" in nature unless we can make a small improvement, that is, unless Members support this amendment on removing the Permanent Secretary's power of rejecting elected school managers.

Madam Chairman, I am not saying there should be no vetting for all school managers. I am simply saying that two types of school managers should be exempted — parent managers and alumni managers. Why are teacher managers not included? The reason is that teachers are school employees who must have undergone vetting at the time of teacher registration. It follows that all serving teachers must necessarily be fit and proper persons. In contrast,

parent managers and alumni managers have never undergone any vetting, and I do not think that there should be any for them, because they are elected managers.

During our discussions with the authorities, we were told that an elected manager might have some personal secrets unknown to the voters. They cited the example of a certain school manager, well-known to all, who had committed sexual assault. There was no prosecution because the victim did not wish to make the case public. The government official said that although the case was widely known, the man could still serve as a school manager. There is actually a very simple solution to this problem. If all is widely known, and assuming that the election is open and transparent and the voters are thoroughly well-informed, I am sure that no one will ever vote for the person concerned. Besides, if officials of the Education and Manpower Bureau know that one such person is going to stand in an election, they may tell the story to the parent organizations or alumni bodies concerned. The person will not dare to bring any charge of libel against them because the story is true. The dissemination of such information will help make an election open and transparent; that way, we need not worry about the occurrence of such cases.

Madam Chairman, I have recently heard of some cases of post-election vetting. I do not know whether there will also be any patriotism vetting after the upcoming Legislation Council elections. I hope that the Education (Amendment) Bill 2002 will not become a precedent. During our discussions with the Government, I mentioned the point that the concept of "a fit and proper person" could in fact be expressed in terms of more objective standards. But the Government replied that it might be difficult to compile an exhaustive list. But I can tell the Government that there are many examples to prove that this will not be the case. For example, under section 17(3) and (4) of the Social Workers Registration Ordinance, the Social Workers Registration Board shall refuse to register a person as a registered social worker if it is noticed that the person is not a fit and proper person. And, "not a fit and proper person" is clearly defined. In Schedule 2 to the Ordinance, it is stated that any person convicted of the offences listed therein (on two A4-sized pages) will be deemed "not a fit and proper person". Fifty offences are listed, and I shall quote several of them: incest by men, incest by women of or over 16, rape, non-consensual buggery, sexual intercourse with a defective, administering drugs so as to enable

a third person to do an unlawful sexual act, and so on. The list is very detailed, so we can see that it can be done and is not something impossible.

The question is whether or not the authorities should be given such a great and flexible power to reject the result of an election. To put it simply, if the Permanent Secretary is empowered to reject the result of an election on the basis of such a vague standard, the authorities are in effect allowed to manipulate the outcome of the election. If a person to the liking of the Government is elected, he will be considered fit and proper. If not, the elected person will be considered not fit and proper.

Therefore, Madam Chairman, if the old provisions are retained after the introduction of IMCs and elected managers, a very bad precedent will be set. What is more, the Government's vetting of "a fit and proper person" is also open to question. There is in fact a definition. An appointee, for example, may be required to possess certain professional qualifications; or, his or her character must be appropriate to the public office in question.

But, Madam Chairman, we can see that some members of the Equal Opportunities Commission, despite their opposition to their former Chairperson's legal action against the Government for sexual discrimination in the allocation of secondary school places, are still allowed to serve on the Commission, are still reappointed. Past examples can therefore show us that "fit and proper" as a criterion has already degenerated into a tool of political vetting in the hands of a government marked by the rule of man.

Madam Chairman, I therefore hope that Members can support this amendment, so as to prevent elections in Hong Kong, elections with public participation, from being affected by political vetting.

Proposed amendment

Clause 12 (see Annex III)

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, today, a colleague said that the pro-democracy camp had put on "the wrong shoes" on the issue of the Education (Amendment) Bill 2002. In fact, generally speaking, if we consider the Bill at Second Reading as the embodiment of democracy, you

may well ask: Has the pro-democracy camp put on "the wrong shoes"? However, if you care to read the actual provisions of the Bill, you will realize that the pro-democracy camp has actually put on the most suitable shoes in opposing this Bill.

If just because the PSEM finds the management of a school unsatisfactory, he may then appoint many school managers to the school, close the school, or he may even refuse to register a school manager elected in a popular election just because he finds that elect not fit and improper, what kind of democracy is this? Why do those supporters of the Bill for reasons of democracy not join the pro-democracy camp in opposing this power of the PSEM? Therefore, we can see that, democracy is not as simple as the addition of a parent representative and a teacher representative. Democracy depends on whether the provisions have shown due respect to the elected school managers, with no unnecessary conditions such as "fit and proper" attached. These conditions are too ambiguous, but they may be used by the authorities to refuse the registration of elected candidates as school managers.

This basically runs counter to the principles of democracy. Therefore, the amendment moved by Ms Cyd HO is very important. The Government said that the wording of not "fit and proper" is commonly used in many Ordinances. However, the Legal Adviser informs us that there is not a single provision in law which invokes "not fit" and "not proper" as the ground for invalidating an elected member. No, not any.

This provision is the first of its kind. Why should a Bill proclaimed as legislation for democracy and meant to devolve powers be the first Bill to confer power on the PSEM to invalidate elects? Besides, in the course of our deliberations on the Bill, a case with an elected manager has really taken place. This person is by the name of FUNG Ka-keung. I think FUNG Ka-keung must find it weird that his name has been mentioned so often today. Putting his case against the context of our legislation, we find that our allegation regarding this legislation is not pure speculation, but quite well founded indeed. It verifies that Ms Cyd HO's amendment is supported by a realistic and reasonable ground. I support the amendment moved by Ms Cyd HO.

MS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Ms Cyd HO's amendment.

In the course of deliberations on the Bill, I actually understood the concerns and worries of the authorities. I think to a great extent, there should be some kind of a mechanism. However, just as Ms Cyd HO and Mr CHEUNG Man-kwong said just now, if the school managers are elected, they should not be "screened out". Therefore, I think this should be considered by the Secretary. Otherwise, if the Secretary says that a certain elected school manager is not "fit and proper" and screens him out, I believe there must be a problem with this.

Ms HO has also mentioned a case with the Equal Opportunities Commission. Some people were also appointed with such requirements and arrangements. However, can they instill confidence in us with what they have done? Therefore, the Government has introduced this requirement for itself, and upon the application of the requirement, it has brought about such unexpected effect, which makes us feel that the Government will award appointments to those who are loyal and are willing to make remarks that it feels like listening. If this criterion is adopted, the situation will be all the more terrible. If the elected persons are those the Government does not feel like listening to, and if the Government can disapprove of their becoming school managers, I think this is unacceptable.

The case of FUNG Ka-keung is really a coincidence, which just took place during the period of time when the Bill was being scrutinized. When his case was disclosed, everyone felt uneasy because everyone in the school knew him, and everyone voted for him and were fully aware of his past offence, as well as the reason for his unreasonable arrest by the police. But this problem still arose. Therefore, I hope the Secretary can support Ms Cyd HO's amendment, so that the elected candidates can be registered, and that the Government is not given the power to disapprove of his becoming a school manager. Thank you, Madam Chairman.

MR YEUNG YIU-CHUNG (in Cantonese): Madam Chairman, I oppose Ms Cyd HO's amendment. Ms HO thinks that as the nominated parent manager and alumni manager are elected, so the Secretary should not refuse to register them as school managers on the ground of not being "fit and proper" persons. Ms Cyd HO thinks that school managers returned by a certain mechanism should be removed only by the same mechanism. This sounds reasonable enough. However, as a matter of fact, this is not the case in most situations, including that for Members of the Legislative Council. Be Members returned by direct

elections or functional constituency elections, there is not a single provision stipulating that such Members should be removed only by their respective constituencies. According to the Basic Law, there are seven situations that can activate the removal of Members of the Legislative Council, or the disqualification of Members, so to speak. Therefore, in an IMC, though school managers are returned through two channels, 60% are appointed and 40% are elected, the so-called elections are never quite so stringent as those for the Legislative Council. I am not saying that the elections of school managers should be as stringent as that for the Legislative Council. I do not support such an approach, nor should there be such a need, because this will discourage the aspiring persons. In future, who will still be willing to take part in any elections to IMCs? Therefore, as the PSEM is the highest official responsible for the enforcement of policies in the Education and Manpower Bureau, he should be able to refuse to register a certain person as a school manager on the ground that the latter is not a fit and proper person. He is the last gatekeeper. He is acting on behalf of the public to protect the interests of the schools. I do not think there is anything wrong with this. This is the first point.

The second point is, Ms HO said that we may reject other school managers on such a ground. I also disagree with her suggestion because this will not be equal and impartial. Within the same SMC, we cannot allow some people to be exempt from such restrictions just because they are elected. As a matter of fact, within the same IMC, all managers, be they parent manager, alumni manager or SSB managers, are tasked with the same duties and responsibilities, and there should not be any distinction. Therefore, we support the original intention of the Government, and we should draw up a uniform standard.

The DAB agrees with the approach of the Government because the voters may not have full grasp of all the relevant information. Of course, the PSEM is also subject to monitoring by the Legislative Council. If he commits any errors, the Legislative Council will not let him get away easily. Therefore, with these remarks, I oppose Ms HO's amendment.

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, I rise to speak in support of Ms Cyd HO's amendment. Earlier many people have mentioned "wearing the wrong shoes". In fact, it appears that it is the Secretary Prof

Arthur LI who has worn the wrong shoes. The Secretary has been so supportive of electing school managers from among parents and teachers, why at the end of the day he would wish to deprive them of their power? Why does the Secretary still wish to hold the power to approve and disapprove of their registration? That is to say, the PSEM and the Government still holds the power to decide whether the elect is "fit and proper". Why should you still wish to hold this power? Of course, I know the authorities had given us this reply in the meetings of the Bills Committee, "No, we must protect education. This is very important because the schools are very important. They are very important for our next generation." In fact, if the Secretary really insists on this view, why was he unwilling to listen to the views of SSBs in the Second Reading debate? They also want to protect their schools as well as their right of educating the next generation. Why does the Secretary not think from this perspective conversely? Why should he cause such a great fuss in the education sector?

Even if we do not discuss whether he has caused a great fuss in the education sector, let us focus our discussion on this amendment. In fact, at the end of the day, the Secretary still have to determine whether it is reasonable. Why should the Secretary think that he should hold the power to determine whether an elect is "fit and proper"? Why can he not respect the voters? Regarding the first point just mentioned by Mr YEUNG Yiu-chung, that is, if the PSEM has committed an error, the Legislative Council will exercise monitoring over him. Right now we are exercising our monitoring over the case of FUNG Ka-keung, so what? Insofar as the case of FUNG Ka-keung is concerned, we do find something wrong and say that the conditional appointment is a kind of political vetting. However, we still would not move a motion of no-confidence. If we really move such a motion of no-confidence against the Secretary for the case of FUNG Ka-keung, will you support us? We will not act like some other people in elevating the issue to the level of high principles just for a case like this.

Therefore, even though it is said that the Legislative Council can exercise monitoring on the Government, it would be impossible for this Council to monitor the Government over each and every such small incidents. Frankly speaking, there is in fact no mechanism for the Legislative Council to exercise monitoring because it is not stipulated in law that after the PSEM's decision has to be endorsed by the Legislative Council by way of a resolution. Such a

supervisory mechanism absolutely does not exist, not in law. Regarding the removal of Members of the Legislative Council, as just mentioned by you, there are already provisions in the Basic Law providing for such. In fact, the issue of school managers can also be addressed by provisions in the constitutions of the IMCs. In other words, everything can be decided by the constitutions of the IMCs, and let it be the monitoring authority for the entire election. This will ensure that, upon the completion of the election, the constitution can be invoked to decide on such issues as whether an elect is "fit and proper" and whether removal actions should be taken. Why can we not trust the parents and teachers and let them use their own mechanism to solve the problems? Instead, the PSEM is being given the power to make the decision of "dismissing" the school manager elected by parents. I feel that such a practice is totally unreasonable. Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, I rise to speak in support of Ms Cyd HO's amendment. In the Second Reading debate, I already mentioned that, though the Education (Amendment) Bill 2002 is about the democratization of schools, it actually consists of only one main idea, namely, the centralization of powers in the hands of the Government. This is an evident example. Even if a candidate has been elected, the PSEM is still able to apply his criteria to determine whether the elect is suitable. Of course, the incident of FUNG Ka-keung, which has been frequently referred to by Members today, is a very evident example. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, I think no one in this Chamber will disagree that there is no problem with making persons taking up public office subject to certain statutory conditions and requirements (the most basic and least requirements), and this can be extended to elected members of representative assemblies. This principle can equally be applied to appointment to any other public office, provided the conditions are explicit, objective and applicable impartially to all. For example, we can have such conditions as having no criminal record or having no previous imprisonment. For example, in the case of a District Council member, if he has been sentenced to imprisonment for over three months, he can no longer serve in that public office. Or it can be stipulated that the candidate should not be a bankrupt. All these must be explicit and objective. And also these must be the most basic conditions.

Secondly, it is the issue of how to identify the right persons for the job. If it is a democratic electoral system, I cannot see any rationale for conducting any vetting, be it political vetting or professional vetting. If there is vetting, perhaps the Government should simply ask certain persons not to stand in the elections. But this is against the spirit of election. Elections should be decided by those who are eligible to vote. In fact, if a vetting or a criterion like "a fit and proper" person is added, it is most commonly used in some professional licensing mechanisms, and in our work, such wordings are most frequently encountered in legislation related to financial matters. In Ordinances on professional practice, we also frequently come across such wordings as "fit and proper", and such wordings will have their own standards in their respective professions, that is, whether the persons in question have a good standing or any record of malpractice in the past. These are rather explicit, and they are not applied after an election has been held to determine whether the elects are suitable or to determine whether the voters have been wise enough. This is a complete misunderstanding of the proper application of this mechanism.

If the Secretary says that the voters may not know how to elect the right candidates, for example, they may have chosen a candidate who is particularly eloquent or photogenic, but he is actually involved in a lot of love affairs, and so on. Frankly speaking, if someone has done something bad and such bad behaviour is already public knowledge, he will not be elected certainly. Our worry is: The Government may say that we have grasped certain information about that person which you do not know. We have access to that information, but as it is highly sensitive, we cannot disclose it to you; but I can tell you that he is not the proper person for the job. What happens if this situation does occur? Therefore, I feel that the entire standard of "fit and proper person" is completely inappropriate for any electoral system. If this is unscrupulously incorporated into an electoral system, it will simply make the whole electoral system ridiculous and hypocritical, and it will be an insult to the system and the voters.

Until now, I believe the Government is still unable to come up with an objective standard to define "fit and proper". If it can, please make it objective. If some persons are considered improper because they are considered anti-government, or some persons are considered improper because they have performed civil disobedience, then please put them down in black and white, and let us discuss them. However, I would naturally ask you, "Are those who were involved in the 'Movement of Fighting Against the Violence of the British' in the

past considered proper candidates?" We all know that the elder brother of Mr Jasper TSANG, Mr TSANG Tak-sing, is now a member of the Central Policy Unit. Can he become a school manager? I am not being disrespectful to him, Mr TSANG, I am not disrespectful to him. He has his own conviction. But I would not think that he should be rejected for becoming a school manager if he is elected. Secretary Prof LI had better tell me whether Mr TSANG Tak-sing is suitable? He was the hero in the fight against the violence of the British, and he has a criminal record and had been imprisoned, is he suitable? If he is suitable, why is FUNG Ka-keung not suitable? This is something that should be discussed openly and cannot be dealt with behind the scene. This yardstick of "fit and proper" is only known to the Secretary — it is an "invisible sword" that can be used only by himself, and he can kill you with it before you know it. However, it cannot be allowed to happen that way.

Madam Chairman, how can an election be conducted with such a system — with no rules while the elects are determined whether they are "fit and proper" by a certain person according to his own personal preferences? In fact, the person who has the power to say whether a certain person is fit and proper may not be the fit and proper person for making that decision.

MR JASPER TSANG (in Cantonese): Madam Chairman, may I make one correction to the speech of Mr Albert HO? Madam Chairman, I shall only make one simple correction: I am the eldest one, and I have no elder brother. *(Laughter)*

CHAIRMAN (in Cantonese): As you look younger, so Mr Albert HO thinks that TSANG Tak-sing is the elder brother. Thank you for your correction. Does any other Member wish to speak?

MR TOMMY CHEUNG (in Cantonese): Madam Chairman, I am speaking to oppose Ms Cyd HO's amendment. In fact, it appears our discussion has departed from the issue of "fit and proper" candidates. I think, what is not controversial is, school managers should be fit and proper persons. However, insofar as Ms Cyd HO's amendment is concerned, if we are talking about a teacher representative, needless to say, a teacher must be a fit and proper person.

But for parent and alumni representatives, will such representatives, once elected, be subject to political vetting? Will they be deemed not fit and proper just because some of them are less favoured by the Secretary?

However, I must strike a balance somewhere. As school managers have to seek allocation of fund, and in particular, such fund is taxpayers' money (and as we have said, a secondary school requires more than \$30 million annually, whereas a primary school more than \$20 million), we feel that members of the IMCs must all be fit and proper persons, especially when 60% of the school managers are appointed, plus some independent ones. However, the only question now is: Should those elects also meet such standards? I do not look at it as a case of political vetting. I feel that we can put it this way: The PSEM is made the gatekeeper who keeps an eye on the standard. As such large amounts of taxpayers' money are allocated to such people, is it not reasonable for the PSEM to decide whether they are fit and proper persons, regardless of the channel through which they become school managers? Of course, we trust the PSEM (1) will not abuse the power; and (2) has access to more information than any parents' associations or alumni associations can possibly have. When the elections are conducted (as these are not elections of the Legislative Council, nor are they elections for the District Councils, which would be monitored by a lot of people, and there is also a Judge overseeing the elections in accordance with the electoral laws), will there be some problems with elects returned in certain cases? I do think this point warrants our careful deliberation.

In fact, the principle of "fit and proper" has long been applied in law. Although the meaning of "fit and proper" is not so well-defined in the elections of school managers, voters can actually consider such a basic principle and can clearly contemplate whether the candidates are fit and proper. If such principles can be spelt out in law, voters may make an effort of trying to understand the background of the candidates. I cannot accept the suggestion that parent managers and alumni managers be exempted from this principle. Therefore, the Liberal Party hopes that the Government can formulate some guidelines, and provide some interpretations of "fit and proper" in other legislations, coupled with some explanations for the reference of such voters.

In the course of scrutinizing the Bill, some Honourable colleagues are also of the opinion that the power of the PSEM in rejecting the applications of certain school managers is too excessive. However, as we have just said, as it involves allocation of huge funds, if our side is not protected by a good goalkeeper, how can we, the players, enjoy the game with our minds at ease?

Besides, I would like to point out that, if the PSEM really abuses his power, there is still an appeal mechanism to deal with the situation. When the PSEM says that a certain school manager (elected or appointed) is not fit and proper, he must state his reasons for his decision. In addition, there is also an appeal procedure. Under such circumstances, it is very difficult for us to agree with Ms Cyd HO's amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, many Honourable Members have quoted the case of FUNG Ka-keung to illustrate the Education and Manpower Bureau's move to intervene in the registration of elected school managers or to criticize the power of the PSEM being excessive. I would like to clarify such misunderstanding or distortion of facts here. FUNG Ka-keung was elected by the Kwun Tong Government Secondary School Alumni Association as a member of the School Management Committee in November 2002. This Committee was referred to as the SMC. He was elected as the second alumni representative on the SMC. Later, this alumnus declared that he had a criminal record when he filed a return of his personal particulars, and he also disclosed that he was in the process of lodging an appeal.

First of all, this incident happened in a government secondary school. All government secondary schools are government educational institutions which are directly managed by the Education and Manpower Bureau. Therefore, the way of handling the case of FUNG Ka-keung does not have any direct relation with the provisions of the Bill. Government secondary schools have started to adopt school management committees (SMC) since 1999. The SMC comprises various major stakeholders, while some of its members are elected and their

appointments are subject to the approval of the PSEM. Although government schools are exempted from compliance with the Education Ordinance, and their SMC members are not required to register under the Education Ordinance, the operation of such schools is not only based on policies and principles drawn up with reference to the standards stipulated in the Education Ordinance and also an intention to surpass such standards. As the educational services of schools have a direct impact on our students, so our Bureau has been most prudent in processing the appointments of SMC members.

SMC members of government secondary schools must meet the requirements in terms of integrity, honesty and morality, together with a clean record of having committed no serious criminal offences or having committed no criminal offences again recently. In the case of FUNG Ka-keung, as it is still in the process of appeal, so FUNG Ka-keung is at the moment still a SMC member. Therefore, we have not been involved in any so-called political vetting, or intervention of school administration. I must set the record straight: After his appeal is complete, we shall conduct a review. It is just as simple as that.

As for persons nominated as parent managers, replacement parent managers and alumni managers, they are returned to the IMCs by election in their respective groups of voters. However, when different groups of voters cast their votes, they may not have access to the full information of a certain nominee, so as to verify whether that person is a fit and proper candidate for appointment as a school manager. For example, voters may not know the health condition of that particular nominee, whether he has been involved in any unlawful activities, or whether he has committed any professional misconduct, and so on. The proposal assumes that anyone returned by an election is suitable for appointment as a school manager, regardless of any circumstances. However, we should also consider that, if some corrupt practices or unusual circumstances have taken place in the election process, then there may be some problems with the elected representatives. Let me cite a hypothetical case in a SMC election: If all the candidates (except one) are intimidated into withdrawing from a SMC election, so the remaining candidate will be elected uncontested, as he is the only candidate. If that certain person, for various reasons, is not a suitable candidate for appointment as a school manager, should the PSEM be deprived of the power to intervene under such circumstances?

Therefore, in order to ensure the smooth operation of the schools and to protect the interests of the students, we think it is necessary to retain sections 31 and 30(1)(b) of the Ordinance, and make them applicable to all applicants for registration as school managers, so as to enable the PSEM to hold the final supervisory power, so that he can ensure that only suitable persons are appointed school managers, thereby ensuring good school management. In addition, I would like to stress that, if the applicant is dissatisfied with the decision of the PSEM, he may still seek redress with the Appeal Board. The decision of the PSEM is also subject to judicial review, so actually the protection is quite adequate.

For the above reasons, the Government opposes the amendment moved by Ms Cyd HO. I also call upon Honourable Members to oppose Ms Cyd HO's amendment.

MS CYD HO (in Cantonese): Madam Chairman, I would like to respond to several points. First, I would like to respond to Mr YEUNG Yiu-chung. We are not discussing removals; there is a separate mechanism to deal with removals. After the Bills Committee had held a discussion with officials of the Education and Manpower Bureau, the Bureau accepted the amendments proposed by members, that is, parents' or alumni's organizations shall enforce their own removal procedures. There is no problem about this. What we are discussing is: Is it necessary for elects to undergo a vetting?

I believe Members present in this Chamber are all elected, regardless of whether they are elected by large circles or small circles. I wonder if you would find this acceptable: After being successfully elected, you are still required to undergo a vetting by a certain person. In every election there would be malpractices and corruption. Certainly. Therefore, we have the Elections (Corrupt and Illegal Conduct) Ordinance. Maybe the Secretary for Education and Manpower should consider extending the applicability of this Ordinance to the elections of school managers, and then it may solve the problem mentioned by the Secretary. And should there be any acts of duress, bribery or intimidation with the purpose of deterring other people from standing in elections, the victims should lodge complaints with the Independent Commission Against Corruption. There is absolutely no problem with this.

However, if we say that, there are elections, but the mechanism may not be good enough, or there is the worry that the elections might turn out to be "half-baked" ones, so in the end, some people think that it may be a good idea to have the PSEM exercising a final check on the outcome. Then, it is really premature for such elections to be held, and in this case, such elections really do not deserve to be called democratic elections. Madam Chairman, in fact, when we were in the process of deliberating on the Bill, we had put forward a proposal to the Education and Manpower Bureau. We proposed that reference be drawn from the practice adopted in the Legislative Council Ordinance, that is, even if a candidate has been elected, he can be removed from office if he is proved not qualified, thereby making him lose his seat. Or when a candidate has made an advance declaration that he has not committed any offences, and it is discovered afterwards that his declaration is false, then he is also subject to removal from office. All these can be stipulated clearly in the legislation, and it is not necessary for the PSEM to exercise his power to determine whether the elect is fit and proper.

Insofar as government schools are concerned, Madam Chairman, Mr FUNG Ka-keung is really a member of a government school alumni association. Regarding government schools, in the course of deliberations, we did ask, "If the IMCs are so good, why do government schools not adopt this policy? Why should such a good piece of protective legislation not extended to parent managers of government schools?" The officials at that time told us that, subject to the restrictions imposed by certain provisions in the Interpretation and General Clauses Ordinance, the Government cannot be subject to any regulation. In spite of this, the officials made an undertaking that they would make the operation and regulation of SMCs of government schools similar to those of IMCs as far as possible. This is the undertaking made by officials of the Education and Manpower Bureau. Unfortunately, the Secretary was not present at the meeting, so he is not aware of such an undertaking.

Lastly, Madam Chairman, the point I would like to respond is, now I know Mr Jasper TSANG is the eldest son of his family. I get this message now.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment moved by Ms Cyd HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, five were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 14 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendments to clause 12 moved by the Secretary for Education and Manpower, I now put the question to you and that is: Clause 12 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 17 and 26.

CHAIRMAN (in Cantonese): The Secretary for Education and Manpower has given notice to move amendments to clauses 17 and 26. His amendments to clause 17 involve the proposed Part IIIB and numerous proposed sections. Among these amendments are the addition of new section 40AEA, and amendments to proposed sections 40BJ and 40BR. Members have already been informed that Mr LEE Cheuk-yan has given notice to move an amendment to add new section 40AEA, Mr CHEUNG Man-kwong and Ms Cyd HO have respectively given notice to move amendments to proposed section 40BJ, and Ms Cyd HO has given notice to move amendments to delete proposed section 40BR from clause 17 and to clause 26.

The Committee will first deal with the amendments regarding new section 40AEA, proposed sections 40BJ and 40BR, in that order.

The Committee will now deal with the amendments to add new section 40AEA to clause 17.

CHAIRMAN (in Cantonese): The Committee now proceeds to a joint debate. I will first call upon the Secretary for Education and Manpower to move his amendment, as he is the public officer in charge of the Bill.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendment to add new section 40AEA to clause 17.

During the consultations and deliberations on the Bill, we heard that various SSBs were concerned about the deployment of principals and staff among their sponsored schools. To expressly provide that SSBs may maintain its existing arrangement in transferring principals and teachers among schools under the same SSBs, we propose that under certain circumstances, such as to avoid over-establishment due to the reduction of classes and for the professional development of the teachers concerned, SSBs are empowered to deploy principals and teachers among its sponsored schools. The amendment sets out clearly conditions where SSBs may exercise this power. During the entire course of deliberations on the Bill, we attempted with great sincerity to ease the

worries of SSBs. The present amendment is one of the examples. I hope Members will support and pass the amendment. Thank you, Madam Chairman.

Proposed amendment

Clause 17 (see Annex III)

CHAIRMAN (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak on the amendment moved by the Secretary for Education and Manpower as well as his proposed amendment.

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, what the Secretary for Education and Manpower has just said is the original intention of the Government in making the amendment. I think there is absolutely no problem with this amendment. My intention is to extend the scope of what he has said. In the speech just delivered by the Secretary, I find one of his remarks particularly agreeable to me (though it is not in line with the original intention) — I heard him say that he was concerned about "the deployment of staff". He used the word "staff", but the final version of the amendment is not about the deployment of staff. Instead, only principals and teachers can be deployed. As for my amendment, I have added the staff members and workers into it. This is what my amendment is all about.

I very much hope that the Secretary can withdraw his amendment and support mine instead, thereby providing one of the amendments with a happier ending. Is this possible? Maybe someone will say, "Yan, you are mindful of your own version." They are the same. Actually, there is no conflict between my amendment and that of the Secretary for Education and Manpower. He has the same concern as mine. I have only added the element of the staff members and workers, why can I not do this? Does the Government have to discriminate against staff members who are neither the principals nor the teachers? A school does not only consist of the principal and teachers, but also other staff members such as technicians in the laboratories, school workmen, clerks, and so on. There are a lot of other staff members. Why SSBs cannot redeploy the rice bowls in the face of reduction in classes or redeployment of posts? My present amendment pinpoints this problem. I think in future, it may become necessary

for us to give such a power to sponsoring bodies. Why? As a matter of fact, we all know that, at present, if labour unions are facing such a problem, they may negotiate direct with the SSBs. Should the negotiation come to a successful conclusion, the SSBs will naturally proceed to redeploy the jobs in the various schools operated by them. In future, this will be different. After I have successfully negotiated with the SSBs, they may say that they still have to wait and see whether the two IMCs are willing to do so. If this were stipulated in the legislation, then the IMCs will not be able to say that they are unwilling to take that course of action, and under such a mechanism, members of the non-teaching staff will be able to enjoy the protection.

I just wish to bring in this additional point and hope that the Government will not discriminate against those staff members. I hope all Members can support my amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Education and Manpower as well as Mr LEE Cheuk-yan's proposed amendment.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, recently, the trendiest term is "to display goodwill". Regarding this Bill, I support the amendment moved by the Secretary for Education and Manpower, and I also support the amendment of Mr LEE Cheuk-yan. In fact, the crux of the two amendments is: If the SSBs are willing, they may maintain the morale of their staff members through internal redeployment of teachers, principals and staff members affected by the extension of schools or reduced number of classes to suitable posts.

I fully understand that the principal, teachers and staff members of a school are like a family — all are working for the same school, or serving the same SSB. However, now, the order of moving the two amendments has given rise to an unfortunate situation: If we support the amendment of the Secretary Prof Arthur LI who stands for the Education and Manpower Bureau, it means that the Secretary's amendment will defeat Mr LEE Cheuk-yan's amendment, and as a result, a well-intentioned and reasonable amendment cannot be hung on

this big Christmas tree, the Bill. In the end, only the principals and teachers are given protection, but not other staff members.

I would like to tell the Honourable Members and the Secretary that, in fact, this protection is not provided casually. The protection can only be effective when two schools under the same SSB agree to make the redeployment, that is, one party is willing to release the staff member, whereas the other party is willing to receive him. As such, this safeguard provision ensures that a person leaving School A can be accepted by School B smoothly as long as both sides agree to the transfer without any obstacles. This is the true spirit behind this provision. Therefore, if the Secretary does not withdraw his amendment, Mr LEE Cheuk-yan's amendment will practically not be put to the vote. As for the amendment moved by the Secretary or the Education and Manpower Bureau, we cannot withhold our support for it because it was drafted by the Education and Manpower Bureau after listening to the views presented by the Liberal Party, and we also support the viewpoint presented by the Liberal Party. On a moral level, I do not have any reasons to oppose it. However, when Mr LEE Cheuk-yan proposed that the workers should be incorporated into the amendment, the Secretary's amendment has unfortunately become less preferred. It is unfortunate because the Secretary's amendment originally supported by us is now less preferred. I hope Members of other parties can show their concern about the workmen, clerks of the schools, about whether everyone in the schools can be smoothly redeployed to other posts. If fact, the redeployment will work as long as both parties are willing. I hope other Members can express the same viewpoint, so that the Secretary can withdraw his amendment, thereby facilitating the incorporation of Mr LEE Cheuk-yan's viewpoint into the Bill. This way, we can all vote happily to pass this provision. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR YEUNG YIU-CHUNG (in Cantonese): Madam Chairman, regarding Mr LEE Cheuk-yan's amendment, we in the DAB is supportive. Just as Mr CHEUNG Man-kwong said just now, we are facing a dilemma. We think that Mr LEE Cheuk-yan's amendment has extended the scope of the Secretary's amendment, thus making other staff members not be affected by the class

reduction in the schools. We and the FTU think that this is a worthy cause that deserves our support.

In order to ensure that Mr LEE Cheuk-yan's amendment can be passed, we shall have to abstain from voting on the amendment of Secretary Prof Arthur LI. I hope Members can support Mr LEE Cheuk-yan, so that his amendment can be passed.

MR TOMMY CHEUNG (in Cantonese): Madam Chairman, insofar as this Bill is concerned, I heard at the very beginning that SSBs opposed the establishment of IMCs because IMCs cannot deploy a principal from one school to another. Therefore, I put forward the proposal which was supported by Honourable colleagues. Soon afterwards, the Government launched the voluntary retirement scheme. The main characteristic of the scheme is, teachers working in schools affected by the class reduction may not lose the jobs; instead, they may be redeployed to other schools under the same SSB in which some teachers have resigned. At that time, I said, if this Bill was eventually passed, then those teachers could not be redeployed. What should we do? As teachers and principals of SSBs would really be affected, so everyone agreed to my proposal.

In regard to Mr LEE Cheuk-yan's amendment, I would not view it as a case of discrimination against certain staff members. I have never discriminated against them. However, we must strike a right balance. In fact, how much functional authority do IMCs of schools possess? If principals, teachers and other staff members working under a SSB can be redeployed from one school to another, then when an IMC needs to hire someone, it shall have to wait for a redeployment from another school. If so, on a relative scale, its authority has further dwindled.

Ultimately, it is a matter of striking a balance. Should we give greater authority to IMCs, to the extent of even covering the employment arrangements of non-teaching staff? It is of course a blessing for larger SSBs to have the authority of redeploying its staff, but the question is: Will this affect the authority of the IMC of the individual school in hiring staff or in human resources matters?

Under such circumstances, in the subsequent voting, the Liberal Party will surely support the Secretary's amendment because I cannot understand what will happen if the Secretary's amendment is voted down (that is, if he refuses to withdraws it), and then if Mr LEE Cheuk-yan's amendment is voted down as well. I am afraid there will be even greater discontent among SSBs. The situation will become even worse if the redeployment of principals and teachers is made impossible. Therefore, I support the Secretary's amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, may I request you to grant us a five-minute break?

I think that we, Members from several political parties, should discuss with the Secretary on how this issue could be resolved in the best possible way. I trust the Secretary will also understand that this unfortunate situation arises just because Mr LEE Cheuk-yan's amendment is put after the Secretary's amendment. If Mr LEE Cheuk-yan's amendment is not put in a later order, we do not have to vote on the Secretary's amendment first, and the present situation will not have arisen. I do not know what the Secretary thinks about this. Can the Chairman consider my request?

CHAIRMAN (in Cantonese): Are you requesting me to suspend the meeting for five minutes?

MR CHEUNG MAN-KWONG (in Cantonese): Yes.

CHAIRMAN (in Cantonese): However, after five minutes, the meeting must continue, regardless of whether you have reached an agreement.

4.21 pm

Meeting suspended.

4.36 pm

Committee then resumed.

CHAIRMAN (in Cantonese): Our meeting has suspended for 15 minutes. The suspension should have been five minutes only, but I could not find sufficient Members who were willing to return to this Chamber.

Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, do you intend to speak again?

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, I rise to speak again in the hope of convincing Honourable colleagues. After the five-minute suspension just now — oh, I am sorry, it should be 15 minutes — no agreement or consensus can be reached eventually.

In fact, what is left is but a small issue. I find it a pity, that is, it just takes one extra tiny step and the job is done. Yet, unfortunately, we cannot go any further. I do not know whether the Secretary will speak again. The Secretary just said that he would bring up the issue for examination again next year after a certain period of time. Certainly, I trust the Secretary will live up to his promise. But I still feel that it is reasonable to pass my amendment now because it is very reasonable and simple. Why can the protection not be extended?

However, it is most unfortunate that the Secretary is still unwilling to withdraw his amendment. I had hoped that we could have a happy ending: the Secretary withdraws his amendment, and then everyone can join together in supporting the amendment that includes the protection for staff members. However, now we cannot achieve that, and it is left to the decision of Members by voting. I also understand that we have a major problem here, that is the separate voting mechanism has led to so much discussion in today's meeting.

This is because, under the present circumstances, even if we can successfully oppose the Secretary's amendment, it does not mean that Members can successfully support mine. This is where the shortcoming of the system lies. The Secretary's amendment is not subject to separate voting, but mine has to. And the situation I do not want to see is: After we have voted down the Secretary's amendment, my amendment is also voted down under separate voting. So as a result, none of the amendments is passed. This is definitely not a good result because if none of the amendments is passed, then even the principals and teachers cannot enjoy any protection. I do not want to see this happen.

I know what sort of outcome we shall have today. I shall continue opposing the Government's amendment. But I also hope that the Government can table the legislation to this Council again next year, just to live up to its promise made earlier on. I know when Members can envisage the result of separate voting, you will consider the protection for the principals and education, and then you may be forced into supporting the Government's amendment if you do not want to see that none of the amendments is passed. I fully understand this. Therefore, I can only say that, it is separate voting that does harm to this Council. I would also like to offer my apology to Madam Chairman because we have delayed the proceedings. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak again?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, the purpose of introducing SBM is to enable schools to enjoy autonomy and flexibility, which also covers the utilization of provisions. At present, each school may flexibly allocate its administration grant and adjusted administration grant to cater for its specific needs. It may employ a various number of non-teaching staff to take up specified duties, and decide at its own discretion their employment conditions, pay scale and salaries. Therefore, non-teaching staff are different from principals and teachers of aided schools.

Since the salary scales for principals and teachers on the establishment of aided school have already been fixed, their deployment among sponsored schools

will not encounter much difficulty. However, as the number of non-teaching staff of different grades employed by each school differs, depending on the actual need of individual schools, and their salary scales are not standardized, inter-school transfer is not appropriate, even among sponsored schools under the same SSB. On the other hand, if a SSB requires its sponsored schools to standardize the establishment, salaries and pay scales of their non-teaching staff, it will defeat the original purpose of SBM. Such an arrangement will deprive IMCs of their autonomy and flexibility, barring them from exercising their power to allocate provisions flexibly in employing non-teaching staff.

I must reiterate that the responsibility of school governance is undertaken by IMCs. According to the proposed requirement under subsection (1)(a), (1)(b) and (3), SSBs are empowered to deploy principals and teachers of their sponsored schools. The proposal aims at enhancing the quality of education, but not only out of the consideration of securing employment. More so, principals and teachers selected for the posts do have a bearing on the fulfillment of the mission and aspiration of SSBs in operating schools to a certain extent. Thus, a small reduction in the autonomy enjoyed by IMCs in this respect remains acceptable. However, if SSBs are given absolute power over the deployment of non-teaching staff, the function of IMCs acting as employers of teachers and other staff will be further undermined, violating the fundamental principle of SBM.

The Bureau thus considers it necessary to maintain the autonomy of IMCs in employing non-teaching staff. However, should individual SSBs intend to make such an arrangement, the prior consent of IMCs may be obtained, and the arrangement for deployment of the relevant non-teaching staff should be set out in the constitution or the contract of service.

Owing to the previously mentioned reasons, the Government opposes the amendment proposed by Mr LEE Cheuk-yan. I also implore Members to oppose Mr LEE Cheuk-yan's amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Mr Albert HO, Dr Raymond HO, Mr Martin LEE, Mr Fred LI, Mr NG Leung-sing, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Dr TANG Siu-tong, Mr Henry WU, Mr Tommy CHEUNG, Mr WONG Sing-chi and Mr LAU Ping-cheung voted for the amendment.

Ms Cyd HO, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Ms Emily LAU, Ms LI Fung-ying, Mr Michael MAK and Mr Frederick FUNG voted against the amendment.

Mr CHAN Kwok-keung, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr IP Kwok-him abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present, 26 were in favour of the amendment, eight against it and five abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Education and Manpower has been passed, Mr LEE Cheuk-yan may not move his amendment to add new section 40AEA to clause 17, as it is inconsistent with the decision already taken by the Committee.

CHAIRMAN (in Cantonese): Committee will now deal with the amendments to proposed section 40BJ in clause 17.

CHAIRMAN (in Cantonese): The Secretary for Education and Manpower, Mr CHEUNG Man-kwong and Ms Cyd HO have respectively given notice to move amendments to proposed section 40BJ.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Education and Manpower to move his amendment, as he is the public officer in charge of the Bill.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendment to proposed section 40BJ in clause 17. We propose the Bill to take effect from 1 January 2005 with a view to allowing sufficient time for SSBs and schools to be fully prepared for the establishment of IMCs. The Bill allows ample of time for transition, during which all aided schools are required to submit the relevant documents before 1 July 2009 for the

establishment of IMCs with parent and teacher representatives. In other words, starting from the date of commencement of the Bill until the deadline for the establishment of IMCs, the transitional period will be as long as five years. Upon the passage of the Bill, we will closely monitor the implementation of the amended Ordinance. In case any loopholes or deficiencies are identified in the amended provisions of the Ordinance, causing grave difficulties in implementation, the Government will take the initiative to propose amendments to the relevant provisions for improvement.

To address the concerns of the Bills Committee, we propose the amendment to allow the Legislative Council, by a resolution passed after 1 October 2008 but before 1 July 2009, the deadline for submitting documents for the establishment of IMCs, to extend the deadline for the establishment of IMCs in aided schools by a maximum of two years. I believe, with proper support and successful implementation experience, the SBM framework can be fully implemented by that time. I hope Members will support and pass this amendment.

Proposed amendment

Clause 17 (see Annex III)

CHAIRMAN (in Cantonese): I now call upon Mr CHEUNG Man-kwong and Ms Cyd HO to speak on the amendment moved by the Secretary for Education and Manpower as well as their own amendments respectively.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, this amendment is probably the most important and controversial of all the amendments to the Education (Amendment) Bill 2002 today. As Members are aware, quite a number of major and large-scale SSBs oppose the establishment of IMCs. This means that during the five-year transitional period, they may try out their own SBM models or adopt the one recommended in Report No. 7 of the Education Commission, so that they can still get the participation of parent and teacher representatives and listen to their views in the management of their

schools. On the other hand, once the Bill is passed, quite a number of schools will follow the model provided for therein. As a result, in the coming few years, SSBs will be adopting many different types of SBM models, each with its own merits. But since many major SSBs such as the Catholic Church, the Sheng Kung Hui and the Hong Kong Christian Council object vigorously to the establishment of IMCs, and also since these SSBs operate more than 400 schools in Hong Kong, we can easily imagine what will happen five years later, when the transitional period is over and the schools concerned are supposed to set up IMCs. If they do not establish any IMCs, or if large numbers of schools cannot do so, then, under the law, the Government may replace their school managers, or in other words, take over them in an indirect manner.

Members can imagine how acute and serious the conflicts at that time will be. And, actually, we do not need to wait for the fifth year, because in the interim, since the knot cannot be untied, SSBs will be at loggerheads with the Government over many different issues of education and the education reform, thus producing negative impacts on the quality of education. This explains why the Democratic Party has been trying so hard, in the hope of working out a scheme that can be accepted and tolerated by SSBs, parents/teachers and the Government for the time being. The scheme proposed by us will not stop any schools from experimenting with IMCs upon the commencement of the Bill on 1 January 2005, nor will it stand in the way of those schools that have reservations about the Bill and wish to try out their own SBM models.

What my amendment proposes is that in case we notice any escalating tension between SSBs and the Government over the establishment of IMCs, then, on 1 October 2008, the Legislative Council may pass a resolution to defer the full implementation of the Ordinance in 2010. The merit of such deferment is that it can ease the conflicts temporarily, buying us the time for more experiments, and in turn enabling us to ascertain which type of SBM model is correct, or even to prove that the various types of models are all correct in some ways, not mutually exclusive. We hope to make this possible. We do not wish to see any time bomb that may explode in the education sector in 2010. Nor do we wish to see any scenario in which SSBs, the Government and parents are rendered unnecessarily unhappy and unco-operative by these conflicts. Hence, strictly

speaking, my amendment is simply like a safety valve which may serve to defer the commencement date in 2010 when necessary, or precisely, even to defer the outbreak of conflicts.

Initially, parent organizations could not completely understand my amendment, and they did not accept it. However, after some time, they started to understand that even if this amendment was passed, the Government would still be unable to defer the commencement date unless a resolution could be carried in the Legislative Council under the system of separate voting. As we all know, and as also pointed out by Mr LEE Cheuk-yan just now, chances are actually very slim under the system of separate voting that the Legislative Council will ever endorse a resolution as mentioned in my amendment to defer the date of full implementation in 2010. The chances are really very slim, and such a resolution can be carried only when all Members returned by functional constituency and geographical constituency elections are well aware that the bomb will certainly go off, conflicts will really break out, several dozen schools or even more have refused to establish IMCs, and they may face the replacement of school managers or take-over when the time comes. It is only when Members all wish to avoid such a scenario that they will endorse a resolution like this. To the Government, this is already a very good safeguard.

Then, as voting on the Bill drew close, former Chairman of the Federation of Parent Teacher Associations, Mr TIK Chi-yuen, and also Mr CHEUNG Kwok-wah publicly expressed their support for my amendment. They just asked me whether Bishop Joseph ZEN would also render his support if they supported my amendment. I once tried to lobby Joseph ZEN, and he refused to support me initially. But very strangely, a couple of days ago, during a Catholic function in the evening, Joseph ZEN remarked that if the Government could accept the amendment, it would avoid a lawsuit. The implication of this remark is that Joseph ZEN initially wanted to instigate a lawsuit after the passage of the Bill, but then he decided that he would not do so if my amendment could be passed. In other words, the Catholic Church at least agrees that although my proposal is not the best option, it is nonetheless acceptable. What is more, it will not instigate any lawsuit because of the passage of this option. This is precisely the beginning of reconciliation. Teacher organizations have accepted my proposal, and so have the representatives of parent groups and SSBs not in favour of the Bill. But the Government has not. As a result, such a possibility of reconciliation, or such a safety button, is plunged into a situation aptly

described by Mr LEE Cheuk-yan just now — the amendment of the Government is to be first voted on, followed by those of Mr CHEUNG Man-kwong and Ms Cyd HO. And, if the amendment of the Government is carried, my amendment and that of Ms Cyd HO will not even have the chance of being put forward for voting. We are quite unlike Mr LEE Cheuk-yan, who may have a chance next year. But what is the difference between my proposal and that of the Government? The difference is that while the Government also agrees that a resolution should be passed in case of necessity to defer the full implementation of the Bill, its timeframe of deferment is just two years. In other words, if conflicts emerge after a period of two years, the Legislative Council will be unable to do anything to defuse the bomb. I think the Government is in effect trying to limit the effective period of the safety valve or safety button to just two years, after which all will be disposed of.

Actually, insofar as this Bill is concerned, Secretary Prof Arthur LI always likes to criticize the Legislative Council for "trying to pick out bones from an egg", for being fastidious in other words. However, I wish to tell the Secretary that the aim of my amendment is simply to remove the gunpowder from the bomb. It is indeed very hard for me to imagine what the Secretary has been doing. As a government official, in theory, he is supposed to mediate between SSBs and parents/teachers in their dispute. But in practice, he has not done so. His only worry is that there are no disputes, and he has just been trying to prevent reconciliation. If the present proposal of the Government is passed, the Catholic Church for one will be very dissatisfied, for it will think that their worries have not been allayed. Even though there is a very slim chance that a resolution can be passed by the Legislative Council, the Catholic Church is still prepared to accept the good intention behind this slim chance, and it even decides not to instigate any lawsuit. This should be good news to the Government unless it is bent on being oblivious to the opposition of the SSBs of 400, 500 schools, unless its real intention is to take over these schools and replace their school managers if they do not comply. If this is not its real intention, why does the Government refuse to endorse my amendment?

The Government's only criticism is that CHEUNG Man-kwong's amendment does not set down any fixed date. Wrong. My amendment does set down one. Under my amendment, if things run smoothly and nothing happens, the Bill can be fully implemented in all Hong Kong schools in 2010.

My amendment only proposes that if anything happens, a resolution can be passed to defer the date of implementation. As for the length of deferment, it is all up to the Legislative Council to decide — all up to the wisdom of the various political parties and factions in it. Every political party and faction may exercise its independent judgement. Any resolution on indefinite deferment will stand no chances of passage at all. But if a timeframe of two years is set down, and if the problems cannot be resolved within two years, it will be useless to have any deferment. This is precisely the situation under which the resolution I advocate can be moved. If anyone tries to stir up trouble and really moves a resolution when nothing happens, it will stand no chances of passage in the Legislative Council. If all is calm when the time for a resolution comes, Members probably will not remember such a resolution, will not remember that it has to be put before the Legislative Council for passage in 2008. However, Members will probably hope that if big trouble and problems occur in 2008, the Legislative Council can have some sort of flexibility, can draw on a resolution to defer the matter a little bit, to deal with the situation for the time being, and to prevent the immediate outbreak of conflicts. I think that, to the Government, the amendment can serve the purpose of fostering reconciliation for the time being, while giving it flexibility in easing foreseeable conflicts in the future. Why is it impossible to pass the amendment? What is the reason for the refusal? Why is it that when it comes to the final shooting, the Government is trying deliberately to kick the ball high above the goal, just like David BECKHAM did? This is no good. Therefore, I still want to make a last-ditch attempt, in the hope that the Government can seriously consider my amendment. My amendment is not the best deal for every stakeholder, but it is nonetheless the outcome of mutual understanding and concession, in brief, the outcome of reconciliation. As such, it naturally cannot satisfy everybody entirely.

I hope that the Government can look at this issue from the perspective of fostering reconciliation in the education sector. It must rein in at the brink of the precipice, and it must rein in entirely, or else the whole horse will only fall down the cliff sooner or later, in the end. This will do no good to anyone. I also hope Members can realize that the Bill has led to numerous arguments and disputes ever since the Legislative Council started to discuss it. The Bill has done harm to the education sector and an even greater damage to the education reform. If it is passed, the damage will even become the cause of disasters.

As far as the Bill is concerned, concessions will certainly lead all stakeholders to sunlit uplands, but the Government is also expected to make the first concession. This is the only genuine solution, the only means to foster true reconciliation in the education sector, and the only way in which all stakeholders can put aside their differences for the time being and try out their own models of SBM. Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, there are as many as three amendments to this clause, but its legislative intent on a transitional period originates from the Government, so we would like to express our welcome. This clause is rather complicated and controversial, and many defects were discovered in the course of scrutiny, but the legal support required has yet to be finalized. As we all know, there are bound to many problems at the initial stage of implementing such a new and controversial measure, and it will also take time for SSBs to make adjustments. This explains why the original motion already provides for a transitional period. However, in the course of scrutiny, Members came up with other ideas — if a transitional period can be provided for as a safety valve, can any further steps be taken to enable the stakeholders to ease and avoid their conflicts? Mr CHEUNG Man-kwong has thus been prompted to put forward his amendment, which I consider most conciliatory. His amendment is conciliatory because it proposes the Legislative Council to pass a resolution to extend the submission date for draft constitutions as specified in the relevant Gazette notice.

Our actual experience just now can prove once more that it will be very difficult to pass any motions under the system of separate voting. The system of separate voting is mechanism in the Basic Law to restrict the powers of the Legislative Council. Therefore, with great regret, I must tell Mr CHEUNG Man-kwong that I very much disagree his amendment. The reason is that if something is highly contentious, to the extent that there must be such a long transition, a review following a certain period of implementation and finally a Gazette notice to specify the deadline of submission, it must be extremely important. If we consider something so important, we should not follow the voting system under the Basic Law, which is designed to restrict the powers of the Legislative Council.

For this reason, Madam Chairman, I will vote against the amendment of the Government and that of Mr CHEUNG Man-kwong. But I do hope that Members can support my amendment. What is my amendment all about? It proposes that instead of requiring the Legislative Council to move a resolution, in which case it will be hindered by the system of separate voting, we should invite the executive itself to move such a resolution. In fact, it is best for the executive to do so because in that case, it will have the initiative. It will not have to persuade us to move a resolution; instead, it can do so at any time it likes. The initiative will lie with it, for it will be free to decide when to move a resolution. This is executive-led government, right? My amendment does not mention any date, but I hope the Secretary will not mistake this for any indefinite deferment, because the absence of any date will instead offer flexibility. If the Secretary thinks that conditions are ripe and there is social acceptance, he may well move a resolution in 2005, or 2006, or 2007. However, if he does not think that conditions are ripe, or if he thinks that opinions are still sharply divided, he may decide to do so later, as he is not bound by any pre-set and rigid date. I think this will be good to both sides. Madam Chairman, for the same reason, for the reason that the authorities still cling to the approach of requiring the Legislative Council to move a resolution, I do not think that they have made a genuine amendment and a sincere concession, despite the fact that they have partially accepted Mr CHEUNG Man-kwong's amendment and deferred the mandatory implementation of the Bill by two years. If the authorities were truly sincere in making concessions, they should have incorporated my amendment into the whole clause. As for whether or not there is any subsequent mention of any particular term, it should be the subject of a separate debate. The Government's partial acceptance is obviously based on its observation that a resolution moved by Members must be subject to the system of separate voting. It is obvious that the Government is aware of our weakness, so it has put forward its amendment, which seems to incorporate a partial acceptance of Members' opinions. But we dare not dream of the delight of seeing the passage of such a resolution because under the system of separate voting, the chances are even slimmer than Greece winning the laurel.

Madam Chairman, I understand that before my amendment can be put to the vote, we must first vote on the Government's amendment, and it probably knows that it already has enough votes for passage, so my amendment and that of Mr CHEUNG Man-kwong may not necessarily stand any chance of being put before the Council. But I must nonetheless say that the primary purpose of our amendments is not only the deferment of disputes for a certain number of years

but also the "disarmament" of everybody — we are trying to remove the gunpowder instead of dismantling the bomb. We hope that all parties can put down their "arms" for the time being, communicate with one another sincerely and try out this policy to see whether it is feasible.

Since the very beginning, we have been saying that we support the participation of parents, alumni and teachers in SBM. But is this the best approach? We have tried very hard to persuade SSBs to accept the democratization of school management. But if the authorities lightly resort to authority and the law, confrontation will only escalate. In that case, even if a transitional period is provided for, nobody will be willing to give it a try.

As we all know, two days ago, many religious organizations already made it very clear that they would resort to civil disobedience. In other words, they will not comply even when the Bill comes into operation. Suppose the number of schools operated by these organizations is very large when the time comes, what will the Government do to them? Is the Secretary really going to terminate all the sponsoring agreements and take over all the schools? We call this "central slaughtering". Does the Secretary intend to do so? This will certainly affect teachers and students. However sound and well-intentioned a policy may be, it will be absolutely undemocratic to force through any legislation when people do not accept it.

Madam Chairman, I hope that the Secretary can really consider my amendment at this last minute because it can give him greater flexibility. If the misunderstanding and differences between him and SSBs can be dispelled in the interim, he will not have to wait until 2008-2009. He will be able to make it even in 2006-2007. Therefore, Madam Chairman, I hope that the Secretary can consider this proposal instead of resorting to authority, any forcible approach and the law as a means of forcing SSBs to accept his so-called "democratization of school management", which is nothing but an absolutely undemocratic and unilateral policy.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Education and Manpower as well as Mr CHEUNG Man-kwong and Ms Cyd HO's respective proposed amendments.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR YEUNG YIU-CHUNG (in Cantonese): Madam Chairman, Ms Cyd HO and Mr CHEUNG Man-kwong have respectively put forward amendments to section 40BJ in clause 17 of the Education (Amendment) Bill 2002. Section 40BJ is an extremely significant provision that specifies a timeframe within which SSBs shall submit draft constitutions of IMCs for the aided schools under them to the Permanent Secretary. To put it simply, it set downs the deadline for the establishment of IMCs. In the last week of the scrutiny period, the Government proposed an important amendment. Apart from extending the deadline by half a year to 1 July 2009, this amendment also incorporates a mechanism through which Members can change the deadline, thus making it possible to extend the date of submission to 2 July 2011. I am of the view that this is a major concession on the part of the Government.

The focus of the two Members' amendments is the activation of the mechanism for changing the deadline. Ms Cyd HO's amendment does not mention any deadline, and it only proposes that the Secretary for Education and Manpower shall publish a Gazette notice to specify the deadline, subject to the approval of the Legislative Council. The greatest problem with Ms HO's amendment is the absence of any deadline for the formation of IMCs. An Ordinance with no commencement date will be a "dead" one. If Ms HO's amendment is passed, whether or not the Bill can be passed will not make any difference because nobody knows when all aided schools will set up IMCs. Ms HO's amendment no doubt empowers Legislative Council Members to approve a deadline, but if incumbent Members do not wish to support any deadline for the implementation of the Bill, how can Ms HO convince others that Members of the next term will necessarily agree to the fixing of a deadline? Besides, Ms HO's amendment is nothing but just a stalling tactic, and she simply does not believe in SBM. For these reasons, we will not support Ms HO's amendment.

Comparing the amendment of Mr CHEUNG Man-kwong and that of Ms Cyd HO, the greatest difference lies in the former retaining the deadline of 1 July and empowering Legislative Council Members to pass a resolution after 1 October 2008 to extend the deadline. But the greatest problem with Mr CHEUNG's amendment is that it makes it possible to extend the deadline for

submitting draft constitutions to three years, 10 years or even 20 years. Since Mr CHEUNG agrees that there should be a deadline, why does he still want to drill such a loophole on the wall of deadline?

I do note Mr CHEUNG's argument that there may be problems, so there must be a safety valve to ease the dissatisfaction of the stakeholders. I agree that since the Bill is very complicated, the Education and Manpower Bureau and schools may well encounter various difficulties in enforcement. But it is very important to realize that once the Bill is passed, all in society are expected to comply with it and implement the concept of IMCs instead of trying to avoid compliance with the law. Mr CHEUNG actually assumes that the Bill will necessarily cause chaos in society. But even if there is really any chaos, should we not let the Government introduce amendments to solve the problems? Actually, the Secretary did mention earlier that the situation would be kept under constant watch and review in case problems arise. I therefore think that this safety valve is largely unnecessary. Instead of calling it a safety valve, I would call it a loophole because many SSBs have already made it clear that they will not establish any IMCs even after the passage of the Bill. Therefore, we cannot support Mr CHEUNG's amendment either.

The period from the release of the consultation paper on SBM to the scrutiny of the Bill has seen the lengthening of the transitional period from three years to five. And, the latest amendment of the Government even allows Members to move a resolution to further extend the transitional period to seven years. One can thus say that the transition will actually span one generation, or even two generations, of parents. This means that schools will have to submit their draft IMC constitutions before July 2011 at the latest. Since such a long transitional period, or grace period, will give schools ample time to make preparations and actually establish IMCs, the DAB will support the Government's amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Madam Chairman, I speak in support of Ms Cyd HO's amendment. I think her amendment is better than that of Mr CHEUNG Man-kwong. However, I do not think we will have the opportunity

to vote on each of these two amendments, for the Secretary has already secured enough votes for the passage of his amendment. That is why he is so confident of his success.

The remarks made by Mr YEUNG Yiu-chung earlier focus mainly on the deadline. In fact, how long have we been debating today? It has been eight hours already. The most important issue is the deadline. I believe we hold views different from that of the DAB. We think that if something is good, people will do it voluntarily, without any need for a deadline. If something is opposed by many people, the imposition of a deadline will only provoke disputes. I do not think it is feasible.

Therefore, just before the meeting resumed, I still tried to persuade the Secretary to extend the deadline. Even if Ms Cyd HO's amendment is not passed, Mr CHEUNG Man-kwong's amendment, a compromise option, should be adopted as far as possible. The Secretary has also mentioned the deadline. Madam Chairman, the deadline is a problem. If the parties concerned refuse to comply, put up civil disobedience or resort to legal actions, whom will the Secretary lead to take over those schools that belong to someone else? As spelt out earlier, he is vested with power in many aspects. However, if he really exercises such power, what will our society become? How will the media report the case? Let alone those reports of overseas media. Despite the powers conferred on him, how many could he really exercise?

In respect of landfill charges, discussion has been dragged on for eight to nine years. Do the authorities really dare to exercise or use the power conferred on them?

Madam Chairman, I urge the Secretary to seriously consider this. It is meaningless to force people into compliance by setting a deadline. It is much better to convince them of the merits, providing just a framework to allow them to adapt to the change gradually. That is why Ms HO and Mr CHEUNG have only proposed a mechanism in their amendments. Ms HO also proposes that with the establishment of the mechanism, it can be applied at any time subject to the approval of the Legislative Council without separate voting. Mr CHEUNG's amendment, though more difficult to implement, is better than that proposed by the Secretary by deferring for another two years, but subject to a deadline. I do not think it is a good approach to handle the present conflicts. I

urge the Secretary to think twice. How will the Secretary face the possible charged situations in future? I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, Mr CHEUNG Man-kwong said earlier that his present proposal was accepted by Catholic groups. If Mr CHEUNG Man-kwong's amendment is passed, the issue will at least not be taken to the Court.

However, he added that actually the Government did not accept the proposal. Why? Perhaps the Secretary may explain this later. As it has already been indicated that no legal proceedings will be initiated, why can he not accept it? I hope the Secretary can be more accommodating, allowing more room for consideration on how best to put the content of the Bill into practice. Why can the Secretary not accept this? I have been pondering over the question. However, the Secretary has not yet explained the reason for this.

I guess there may be two possibilities. First, the Secretary wants to show that he will not give in to intimidation. Though the Catholic Church said that they would take the case to Court, it may merely be bluffing. One only knows whether the case will be taken to Court after the Bill is passed. This may be what the Secretary is thinking.

Despite SSBs having said that they would cease to run their schools and return them to the Government if the Bill was passed, it may be considered mere empty talk. It may be considered a bluffing act to the Government before the enactment of the legislation, which upon the passage of the legislation, the SSBs may not dare to do so. The Secretary may be confident about that and is thus fearless. The Secretary may even ignore Mr CHEUNG Man-kwong's comment. This is one of the possibilities. I think the Secretary does not necessarily like gambling. He may not like to play show hand, but the situation is similar to a game of show hand.

What is the other possibility? I mentioned a strong possibility earlier this morning. With the implementation of the legislation, operating aided schools may benefit from the system. However, the legislation includes an additional condition, that aided schools refusing to accept the system may convert to Direct Subsidy Scheme (DSS) schools. Once these schools become DSS schools, they can ignore all this.

Maybe I am speculating about all these possibilities with the mindset of a lowly man. Perhaps the entire scheme of the Education and Manpower Bureau is to accelerate the conversion of aided schools to DSS schools. Needless to say, schools that are successful and confident will choose to operate under the DSS. SSBs and the Education and Manpower Bureau will both welcome the change. When aided schools are converted to DSS schools, much savings can be made in terms of spending and monitoring. There is nothing bad about it. SSBs can have a free hand, doing anything they like.

I thus conclude that these two situations are most likely the case. First, the Secretary is very confident. He does not fear what the SSBs said, for the situation they claimed may not necessarily happen. Second, the Government's real intention is to push them into converting to DSS schools.

Madam Chairman, it is not desirable if these two situations are true. Should we take a gamble on the problems we faced when we formulate a piece of legislation? If you are told that these are not bluffing and they mean what they say, they will really cease running their schools and take the case to Court, what will you do if these two situations do happen? In what way will the existing SSBs benefit? Nowadays, we have been repeatedly promoting the need for harmony. However, in the objectivities so created, people are forced into compliance. Does it do any good?

Still, there is another problem. The Government is forcing schools to convert to DSS schools. I often ask myself, "As the proposed Bill is so good, so useful to schools, who will need such a good piece of legislation after those schools have all converted to DSS schools? What is the point of making such a law?" Since all the schools have already converted to DSS schools, no school will need the legislation.

We really do not understand what the content of the Bill is. The amendments of Mr CHEUNG Man-kwong and Ms Cyd HO differ only in technical aspects; the passage of any one of them is decided by the voting system. Nevertheless, the two of them share a common goal from the outset, a very important spirit; they want a trial of the proposal. A decision on whether the plan should be continued should be made depending on the outcome of the trial.

This spirit is very important. When we fight for democracy, we are told by the Government repeatedly that it should be achieved in a gradual and orderly manner. By the same token, why should the introduction of this system under the education reform not be implemented in a gradual and orderly manner? At present, the crux of the problem is that SSBs are not reluctant to do so; they just want it to be done gradually and with the assistance of the Government. However, the Government has simply ignored them. It acts autocratically, bulldozing its way through. No one is allowed to act against it. It would at most allow a little bit more time, but a deadline must be set. If it has to be so dictatorial as to force its way through, I think it is meaningless.

The mandatory implementation of the legislation will cost the Government the confidence of their partners that has been established over the years. Nothing in common will be left between the two sides. More so, the authorities overpower SSBs to force them into compliance, rendering their efforts devoted to operating schools over all these years into naught, their spirit withered. The suppression has sapped all their spirits. At this very moment, when the Government should try to establish a partnership with the public, it does the opposite indeed. It provokes hostility and antagonism between the Government and the public. What is the point of doing so? If the situation persists, it will not only affect the development of the education system a whole, but also inflict severe damage on the harmonious atmosphere of society at large.

Therefore, as I said earlier this morning, I urge the Secretary to withdraw his amendment, so that the amendments proposed by the two Members may be put to the vote. This will indeed allow all parties more room, enabling the non-government groups to handle the issue with more flexibility. Otherwise, even if the Bill can be bulldozed through and passed, the Secretary will have to bear all the consequences and responsibilities. Madam Chairman, I so submit.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

DR YEUNG SUM (in Cantonese): Madam Chairman, in fact, among the SSBs I have contacted, such as the Catholic Church, the Methodist Church and other churches, they are constantly pondering over a question: Does democratization

of school administration mean that each and every school should be turned into a separate body corporate?

The person-in-charge of the Methodist Church told me, the SMCs of their schools have long since adopted a system to include elected teachers and elected parents in their SMCs. Therefore, it will be adequate to amend the relevant legislation to stipulate that members of the SMC should include elected members. Why should every school be turned into a body corporate?

SSBs thus consider the Government intends to seize their power of instructing, controlling or co-ordinating their schools by means of the enactment of the Education (Amendment) Bill 2002. They consider that the rules of the entire game have been altered. Therefore, they also mentioned that some groups had expressed the intention to stage civil disobedience and initiate legal proceedings if the legislation was passed. The partnership that the Government has established with SSBs over some hundred years will be put to unprecedented challenges, falling into a crisis. They have stated openly that upon the enactment of the legislation, they may return some schools to the Government. I believe this is definitely the last thing that the public or the Secretary would like to see.

These problems are not groundless, but indeed likely to happen. If the Bill is passed today, and the situation does come true, how will it be handled? Must the Bill be bulldozed through? Is there a way out for all parties? Actually, the Democratic Party has done a lot of thinking about this. Mr CHEUNG Man-kwong thus proposes this amendment, one that may be regarded as a halfway or compromise option.

At the beginning, when we contacted the parent-teacher associations, they opposed the proposal of the Democratic Party. They thought that we were employing this tactic to delay the matter indefinitely. It was thought that we were only paying lip service in supporting the democratization of school administration and our ultimate aim was to prevent the enactment of the legislation, so Mr CHEUNG Man-kwong thought of such a plan. However, given explanation, they (including some commentators of the *Ming Pao*) understood our concept. They basically consider this the last resort as there is no better solution.

They, including colleagues of parent-teacher associations, consider they may support Mr CHEUNG Man-kwong's proposal. As a saying by DENG Xiaoping goes, practice is the best criteria for testing the truth. The Bill has yet to be passed, but a heated controversy has already been aroused. Since the Government has proposed a five-year transitional period, would it be possible to earmark a three-year period as a trial period within the transitional period, allowing schools a free hand to implement the proposal. Three years later, the Government may commission a study or conduct an independent study on its own to review the implementation, to determine where there has been unprecedented improvement in SBM after the Bill has come into effect? Has no problem been identified during the implementation of the Bill? In the latter case, the Government may impose comprehensively the relevant restrictions after the five-year period, and enforce the full implementation of the Bill. However, if problems related to implementation are identified during the three-year trial period, amendments can be made. This method feeling our way across the river will at least enable the implementation of the Bill to commence, to be tried out. The effectiveness of the Bill can also be reviewed from a practical perspective. If the effect is good, it can be fully implemented. If it is far from satisfactory, further amendments can be made, or further deferral of implementation can be considered. I consider this a prudent approach to explore with a direction. This approach embodies a bold hypothesis for cautious testing; we can give it a try indeed.

I may also tell the Secretary that this approach may help the Government to ride out or face the storm sparked off with SSBs. Actually, this is more than a storm, a hurricane indeed. It is not simply the few thunderclaps heard yesterday during an address made by the Chief Executive. It is the harbinger of a hurricane. Mr CHEUNG Man-kwong described it as a bomb, but I say it is utterly a hurricane, and we are only enjoying the tranquility prior to the onset of a hurricane.

Therefore, I hope the Secretary will give serious consideration to Mr CHEUNG Man-kwong's amendment, and that our colleagues will — we have been discussing this since 9 am, quite a long discussion, however, owing to the importance of the Bill, this part in particular — I have to reiterate and urge all Members to consider seriously the amendment proposed by Mr CHEUNG Man-kwong. I would like to urge the Secretary, in particular, that in braving his way through, he should mind his steps, beware of mines. As the hurricane is drawing near, he should get himself well prepared. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr CHEUNG Man-kwong, do you wish to speak again?

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, my remarks are simple. Certainly, what I suggest now may not necessarily happen. But I hope Members will oppose the proposal of the Secretary for Education and Manpower. As for Ms Cyd HO's amendment, I will support it. However, it is unlikely that my amendment and hers will have a chance to be put to the vote; both of us will be stricken by the same grief. I can do nothing but to oppose the amendment proposed by the Government.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Ms Cyd HO, do you wish to speak again?

MS CYD HO (in Cantonese): Madam Chairman, I just want to explain it more clearly to Mr YEUNG Yiu-chung. My amendment has not fixed a term; that means there is no delay. The initiative lies with the authorities. If it has the support of all parties concerned, it may be introduced on 2 January 2005. Thus, there is no question of delay.

Thank you, Madam Chairman.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, the Government opposes vigorously the amendments of Ms Cyd HO and Mr CHEUNG Man-kwong because the amendments of Ms Cyd HO and Mr CHEUNG Man-kwong have not set any deadline. They are both clever people, but I fail to figure out why they would have proposed these amendments. I have sought the advice of a wise man, "Since they are that clever, why did they move such amendments?" The wise man asked me, "What year is this year?"

I said, "This year is 2004." "Then what year did Mr CHEUNG Man-kwong propose?" "It was 2008." He asked, "Do you still not understand?" I asked, "So what? Does it matter?" He explained, "It is because 2004 and 2008 are election years, in fact, parents helping the school out by joining the SMC is as good as teachers helping the SMC out by joining the SMC, but they keep on debating the matter. Nevertheless, they are so eloquent that they make the arguments quite impressive, even I who is sitting here will have to nod in approval."

I understand that it is because this is the election year. Unfortunately, parents are not well-organized, they have not much momentum, unlike those SSBs, they can mobilize a lot of electors to support them. Although a lot of parents are electors, they are not well-organized. Fine, I understand that. But I keep thinking. Ms HO proposed that the authorities should specify by notice in the Gazette the date before which a submission shall be made, whilst Mr CHEUNG Man-kwong proposed an amendment to enable the Legislative Council, by way of a resolution at anytime after 1 October 2008, to amend the date for full implementation, and he set no deadline for the extension, then there will not be a specific day for the implementation of this Bill. Can we make law anymore?

Members often criticize the Government, but today I have this feeling. Since Ms HO is the Chairman of the Bills Committee, she is serious and diligent, and for 16 months, 39 meetings were held and 110 hours were spent on the scrutiny of the Bill. Now the scrutiny is complete, she proposes that we should discuss the matter without reaching any decision, although the deliberation is over, we should not make any decision. On the other hand, Mr CHEUNG Man-kwong proposes that we should not implement the decisions even they have been made, that is, we can make the law, but we should not implement it.

We should understand that if an Ordinance has no definite date of implementation, SSBs will adopt a "wait-and-see" attitude, and it will slow down the pace of the democratization of school administration. The same thing happened in 1995 when the new school management measure was launched. As it was a voluntary scheme, thus after a dozen years, as of 2003, only 16% of

schools have teachers and parents in their SMCs. The Bill has stipulated a five-year transitional period, students studying Secondary One will become Secondary Five students by that time, and it will be fully implemented in 2010.

Let us think about this. From 1991 to 2010, it is 20 years in total, comparing with the development of Hong Kong, the progress of SBM can be considered rather slow. If we cannot specify a date in the Bill for implementation, school administration democratization will only be a distant dream. Some of the SSBs may make no preparations at all and will only fight wholeheartedly for the support of Legislative Council Members in the hope of extending the date of implementation, or even to have it extended again and again, eventually scrapping the Ordinance once and for all.

I understand that individual SSBs have misgivings about the Bill, and a lot of people have pointed out that it is a conspiracy. For that reason, I agree that a buffer mechanism be put in place, that is, if the review in 2008 finds that there is an actual need, then the authorities or the Legislative Council may propose a resolution to extend the date for aided schools to submit draft constitutions. Nevertheless, there should be a definite date for the extension. While a two-year extension is reasonable, do we really mean that it should be extended for 22 years? I think SSBs shall have adequate time to solve the problems to be encountered by them in the interim.

After the Ordinance is implemented, the Government will review it from time to time in order to examine whether or not there are any loopholes or shortcomings in the provisions of the Ordinance, and to find out whether or not there is an institutional problem in the course of implementation. If necessary, the Government will propose amendments to improve the relevant provisions. I have to emphasize that we should establish the rights of teacher and parents to participate in the decision-making process, and we should specify a deadline for implementation, with a view to showing the legislature's determination of implementing SBM reform and setting a goal for all parties concerned to pursue.

I reiterate that the Government opposes the amendments proposed by Mr CHEUNG Man-kwong and Ms Cyd HO. I urge Members to oppose the amendments proposed by Mr CHEUNG Man-kwong and Ms Cyd HO. Thank you, Madam Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I would like to respond to the remarks of the Secretary, for the Secretary said my amendment is similar a decision without implementation. In fact, my amendment synchronizes exactly with that of the Secretary in respect of the first five years. How can he say that it is a decision without implementation? The Secretary has cited a wrong proverb. Even if my amendment is passed, schools decided to implement the legislation may do it right away on 1 January 2005. As for those schools decided not to implement the legislation, no matter the Secretary's resolution or my resolution is passed or not, they will not implement it. This approach will last for five years. These first five years are stated unequivocally in the government legislation. In respect of these first five years, my amendment is in no way different from that of the Secretary. The Secretary has in fact improved his amendment in the light of mine, but improved in a way he deems fit. Is he then saying that his own amendment will also result in a decision without implementation?

In criticizing my amendment, the Secretary is in fact criticizing himself. For his amendment is made in the light of mine, just adding a two-year limit. Thus, proverbs should not be cited incorrectly. One should not lightly cite any proverb that he does not fully understand.

Besides, what is the major difference between my amendment and his? That is if a resolution is proposed by me and passed by this Council — it is stated clearly that both Members of the Legislative Council and the Government may propose resolution in the Legislative Council. If the resolution is proposed by the Government, no separate voting is required. In case of crisis, the Government may propose a resolution. If so, why are Members of the Legislative Council also given the power to propose resolutions? This is out of the fear that the Government may refuse to take action even with full knowledge that crises and disputes may occur. In such case, the Legislative Council is obliged to propose a resolution that is subject to separate voting. No one has ever raised this point.

The difference between my amendment and that of the Secretary is that if my amendment is passed, the period of years will be decided by the Legislative Council at the time. The Legislative Council at the time will use its wisdom to decide the number of years to be deferred. According to the amendment of the Secretary, whether or not you have the wisdom to decide, it has to be deferred by

two years. But two years later, you are left to yourself to choose among falling in a "fierce fight", down from a sheer cliff or blown up in a minefield.

As the Secretary agrees that a deferral mechanism should be put in place, by implication, there is an underlying reason for the deferral. The reason apparently is that disputes may arise. Otherwise, what is the point of a deferral? In the light of this, the Secretary, in criticizing me for making a decision without implementation, is actually criticizing himself, for there is no substantial difference between the Secretary's amendment and mine. Conversely, I can criticize the two-year limit set by the Secretary for preventing the Secretary from listening to different views from all sides, identifying points and room for reconciliation, and he will be bent on having his own way.

I hope the Secretary will arrest his horse before it is too late and establish a contingency system as a safeguard. However, the Secretary insists on having his own way. We can thus do nothing but watch him fall down the cliff. No one can save him. Of course, officials may criticize, as they often do, Members for doing all these to canvass votes. However, no matter how dangerous the Bill may be, the Secretary may no longer be the Secretary for Education and Manpower by 2010. The responsibility will only be borne by the officer in charge at that time.

However, today, in drawing up a piece of legislation, should we, as Members of the Legislative Council, act in a responsible manner to ensure that the legislation to be enacted is safe and secure, and can provide a solution in case of conflict? Or should we turn a blind eye to everything and just let it pass? The person insisting to have his own way will fall down the cliff, but down with him is the horse under him. In this case, nothing can be done. Thus, I think the criticism of making a decision without implementation should be directed at the Secretary. If the Secretary considers my amendment a decision without implementation, it is a case of the pot calling the kettle black. But, to the Secretary, I have to add one more comment, he is hell-bent on his own way. Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, the Secretary has been talking about what sort of people are wise men. I am puzzled as to why he still fails to get the point even though I have made it very clear and spoken twice about it. Madam Chairman, I am aware that a lot of time has been taken up and there is no point in repeating. However, why is it that he still fails to grasp the point even

though I have already spoken twice? Secretary, there is no timeframe in my amendment. Since the initiative is in the hands of the Secretary, there will not be any delay. It all depends on the Secretary as to when deliberations and decisions will be made. If the Secretary deliberates but cannot make any decision by that time, it has nothing to do with me. Since the executive has full control over when to introduce a resolution, why should the Secretary be so insistent on refusing even a such flexible amendment and on mandating the commencement of the provision within a specified period of time?

I believe it is because the executive is not confident of gaining the acceptance of all SSBs before the mandated commencement of the provision. That is to say, it envisages that conflicts will continue to occur up to that time. However, all of us do not wish to see this kind of conflicts. In the course of scrutiny, we also kept asking the representatives of the Education and Manpower Bureau what should be done if conflicts occurred. Had it been envisaged that it would be necessary to fight it out? If it was expected that this would be the case, in what form and scale would this take? Could everyone be informed in advance? The representatives of the Education and Manpower Bureau said that they would not take any drastic measure, that they did not want to fight it out and hoped that persuasion could be used to gain acceptance. However, why is it that, on the one hand, it is hoped that persuasion can be used to gain acceptance, and yet on the other, the opportunity to use persuasion was given up and instead, a date for the mandatory commencement of the provision was insisted upon?

Madam Chairman, concerning the year, of course we know that there will be elections in 2004 and 2008. However, the Government's amendment proposes to set the date between 1 July 2009 and before 2 July 2011 instead. On reflection, I find that that is nearly time for the selection of the Chief Executive. In 2011, it will be about time that the Chief Executive for the next term will be selected. Madam Chairman, it is pointless for both sides to conjecture about the other party by following this line of thinking. Since I am not going to conjecture if the Secretary has set 2011 as the timeframe because he will run for the Chief Executive office that year, I also hope the Secretary will no longer speculate on each other's motives, fine?

According to Rule 41(5) of the Rules of Procedure, a Member shall not impute improper motives to another Member when speaking. Although I know that the Rules of Procedure is not binding on the Secretary, I hope that the

Secretary can exercise self-restraint because this is also a sign of self-respect. Only with self-respect can we hold discussions with mutual respect.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Ms Cyd HO, I wish to inform you that not only is it necessary for all Members to observe the Rules of Procedure, the rights and duties of officials in this Chamber are the same as those of other Members.

Does any other Member wish to speak?

DR YEUNG SUM (in Cantonese): Madam Chairman, the Secretary speculated whether the motive of Mr CHEUNG Man-kwong of the Democratic Party, in proposing the amendment, has anything to do with elections. That reminded me of a debate in which Mr Andrew WONG once said that no matter what Members proposed, we should not speculate on their motives because if we guessed correctly, they would be infuriated, thus indicating that you knew what they were thinking; if you conjectured incorrectly, this will increase misunderstandings. I will not conjecture if the Secretary, by recovering the power of SSBs to operate and direct schools through the Education (Amendment) Bill 2002 (the Bill), wants to claim credit from the Central Authorities. There is no point for us to make such speculations any further.

I only wish to point out that the most significant difference between the Democratic Party and the Secretary lies perhaps in the evaluation of the present situation and the assessment of the present circumstances. Both sides may have the greatest difference in this regard. We feel that if the Bill is passed, the tension in the partnership between the Government and SSBs will rise to an unprecedented level. Although the issue of constitutional reform has created tensions in the relationship between the SAR and the Central Authorities, the intensity of these is a far cry from that between the Government represented by the Secretary and the SSBs.

In fact, in dealing with this problem, the Democratic Party — I do not know if the Secretary has got in touch with the Catholic Church and for how long he has discussed with Bishop Joseph ZEN, nor do I know what discussions the Secretary has had with the pastors of the Methodist Church — however, Mr

CHEUNG Man-kwong, Mr SZETO Wah and I have got in touch with them and gained an understanding into why they are so dissatisfied with the Bill. The Secretary asked why it was necessary to discuss the inclusion of teachers and parents in SMCs for such a long time. I reiterate that nobody is opposed to the addition of teachers and parents to SMCs. What we take issue with is the need to change schools into bodies corporate. These bodies corporate have to answer to the Government and the Permanent Secretary can directly intervene in each body corporate. Such an approach will completely transform the structure and relationships of the SSBs as a whole. As far as SBM is concerned, this is in fact an epochal change.

Therefore, it is not on the addition of a parent or teacher that the pro-democracy camp harps on or opposes so vehemently. Some colleagues think that we are biased in favour of SSBs who only have their own interests in mind. Mr LEE Cheuk-yan has put it well in saying that we are only concerned about education and do not want to see any unprecedented damage in the partnership between the Government and SSBs. If this relationship is damaged, it would be difficult to make amends. I do not know how the Secretary can make amends because the Government may have to face legal proceedings and it is possible that some schools will be handed back to the Government. Should a lot of schools be handed back to the Government, in that event — take the closing of village schools as an example, Uncle Fat was also at the scene to witness how many students had taken to the streets — I believe the number of people who take to the streets definitely will not be so small. It is possible that the parents of these students will all take to the streets to demand the re-opening of their schools. Madam Chairman, such situations are bound to occur.

The Secretary has turned a deaf ear to all this now because he has enough votes in his hands. However, this is not the way that the Democratic Party deals with this problem. After examining the situation, it realized that the situation is critical. Therefore it is making an effort now. The difference between the amendments proposed by Mr CHEUNG Man-kwong and the Secretary is in fact insignificant. A five-year transitional period is also provided for in the Secretary's amendment and a further two years have now been added. Mr CHEUNG Man-kwong has merely made three years in the transitional period a trial period and the number of years proposed by him is even small than that proposed by the Secretary. If the trial is successful, then all

schools can implement it together, otherwise, further amendments can be made. It is correct to say that truth can be verified by empiricism, is it not? If we do not bother to conduct a trial before full implementation, I think we may run some risks. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak again or for the first time?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Before I put the question to you on the Secretary for Education and Manpower's amendment, I remind Members again that if the Secretary for Education and Manpower's amendment is agreed, Mr CHEUNG Man-kwong and Ms Cyd HO may not move their respective amendments to proposed section 40BJ in clause 17.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr CHEUNG Man-kwong rose to claim a division.

CHAIRMAN (in Cantonese): Mr CHEUNG Man-Kwong has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Dr David LI, Mr NG Leung-sing, Mrs Selina CHOW, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the amendment.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-sek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 49 Members present, 29 were in favour of the amendment and 19 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Education and Manpower has been passed, Mr CHEUNG Man-kwong and Ms Cyd HO may not move their respective amendments to proposed section 40BJ in clause 17, as it is inconsistent with the decision already taken by the Committee.

CHAIRMAN (in Cantonese): Committee will now deal with the amendments to proposed section 40BR in clause 17 and clause 26.

CHAIRMAN (in Cantonese): Ms Cyd HO has given notice to move amendments to delete proposed section 40BR from clause 17 and to clause 26. The Secretary for Education and Manpower has also given notice to move amendments to proposed section 40BR in clause 17 and clause 26.

Committee now proceeds to a joint debate. I will first call upon Ms Cyd HO to move her amendments.

MS CYD HO (in Cantonese): Madam Chairman, I move the deletion of proposed section 40BR from clause 17 and the amendment to clause 26.

Madam Chairman, this is the provision that carries out central slaughtering. What is section 40BR specifically about? It provides that if the sponsoring body of an aided school fails to comply with section 40BJ by applying to establish an IMC, then the Permanent Secretary may cancel the registration of the managers of the school concerned and appoint one or more persons to be managers of the school. In fact, this is tantamount to a takeover. If section 40BJ is the provision that casts the net by setting a deadline, then this provision is the one that closes the net. When the time comes, the net will be closed.

Madam Chairman, according to section 40BR, if an aided school does not apply to establish an IMC within the period stipulated in the aforementioned section 40BJ, then its autonomy and power to manage the school will become null and void according to section 40BR, as the registration of managers will be cancelled and one or more persons will be appointed by the Permanent Secretary to be managers of the school.

I have also mentioned in my speech given in the Second Reading earlier that I could not agree that a SSB be punished merely because it does not submit and go along with the Government's approach. If SSBs have other methods, including methods that do not require any IMC but still enable them to run their schools in perfectly good order, allow students studying in these schools to make progress in personal development and knowledge acquisition, then why should we penalize them merely because they will not succumb or do not approve of the present new policy of the Education and Manpower Bureau?

Moreover, conferring this power on the Permanent Secretary is neither reasonable nor unjustified. This will also trigger a major conflict between SSBs and the Education and Manpower Bureau in 2009 or 2011. Therefore, Madam Chairman, I propose that section 40BR be deleted. This provision is in fact punitive, and any refusal to establish an IMC will lead to a takeover. Since we also support the participation of parents in SMCs, the participation of parents and alumni in SBM will not be affected even in the absence of such a punitive provision. On the contrary, after deleting this punitive provision, the entire Education (Amendment) Bill 2002 relating to SBM will become a piece of protective legislation. The provisions that have already been passed will provide a legal framework for reference of IMCs and parents will also be immune from civil liabilities.

Madam Chairman, there are still many loopholes in the Bill which we have to continue to plug when the next term of the Legislative Council begins. However, after deleting this punitive provision, the Bill will largely be practicable.

In fact, there are two types of schools that will not be able to establish IMCs in time. One type is those that have made clear their intention to take civil disobedience actions, for example, schools run by the Sheng Kung Hui; another type includes those that cannot fully comprehend the complex provisions because of their own clumsiness, so much so that they cannot sort out this matter in five years' time, as a result, they cannot establish IMCs in time before the deadline. If they cannot establish IMCs because of the clumsiness of these schools and the lack of legal support, they have to be slain by the Government, thus dying a truly aggrieved death.

On the other hand, the Government has not set any deadline for the voluntary legal service support centre that it has promised to establish, nor has it specified any timeframe for its establishment, other than saying that it would do so as soon as possible. As time passes, the date of commencement of the Ordinance will be looming. If a sponsoring body is unfortunately very clumsy or it does not have the money to hire a lawyer to help establish an IMC, therefore it is unable to make it in time and is taken over as a result, then it will die a truly sorry death.

Madam Chairman, during our scrutiny of the Bill, the Bureau said that without section 40BR, section 40BJ would become a "toothless tiger" and would not be legally binding. May I ask what the purpose of those teeth is? Since this is such a desirable provision, why should any tooth be needed? If this policy is really so well-intentioned and the intention so good, why would it be necessary to flash a row of steely teeth to threaten SSBs at the slightest sign of non-compliance? Moreover, the Legal Adviser of our Secretariat has also pointed out that the claims of the Government in fact do not tally with the facts because in the existing Education Ordinance, a number of provisions have already empowered the Permanent Secretary to deal with the relevant matters.

The amendment moved by Ms Emily LAU on the provision about "not satisfactory" has been completely annihilated and could not be passed. Therefore, not establishing an IMC can of course be a reason that fails to satisfy the Permanent Secretary. According to section 82 of the Education Ordinance, the Permanent Secretary may, if it appears to him that a school is not being managed satisfactorily, give directions to a school for remedial measures on the situation concerned. I believe the remedial measure is to establish an IMC. Section 83 also provides that if the conduct of the managers, teachers or pupils of a school is or has been unsatisfactory, the Permanent Secretary also has the power to prohibit the use of any place for the purpose of a school and to give directions. If an IMC cannot be established after five years' time, is this not a conduct which is or has been unsatisfactory? Another sword has been placed here.

Therefore, there are many swords in this piece of legislation. Section 22 is more or less the same. If it appears to the Permanent Secretary that the SMC is not managing the school satisfactorily, this may also lead to the cancellation of the registration or provisional registration of the school by the Permanent Secretary. All these will give grounds for the swords to slash and the power conferred by all these provisions can be invoked to require schools to establish IMCs. In addition, originally there was another section 40CC, which was drawn up for fear that these three swords may not be enough. However, the authorities subsequently agreed to delete section 40CC since the swords at its disposal were already sufficient.

Madam Chairman, from the above provisions, we can see that the existing legislation has already conferred adequate power on the Permanent Secretary to give directions, to cancel the registration of schools and managers and to appoint managers. Why is section 40BR still necessary? What I find most unacceptable is the penalty specified in section 40BR, which imposes penalties on a school just for non-compliance, even though it has never done anything wrong. Indeed, this reminds me of some child abuse cases in which many emotionally disturbed parents beat their children for disobedience, regardless of on what matter their children disobeyed them and their children were beaten whenever they disobeyed.

Madam Chairman, I always oppose this kind of abuse that resorts to sheer authority without good grounds. Therefore, I hope that these draconian provisions will not be attached to the Education Ordinance like ornaments to the Christmas tree. If the management of a school has not taken bribes or is not involved in any dishonest act, nor has it meted out corporal punishment to students or committed any criminal offence, but has merely refused to establish an IMC or to agree with the Government's ideas, thus incurring punishment, this is most inappropriate.

Madam Chairman, I hope Honourable colleagues can support this amendment. This in fact amounts merely to having one sword less and there are still three other. The Permanent Secretary of the Education and Manpower Bureau is already fully empowered to do what he wishes to do. I just do not wish to see such unreasonable provisions being added to our statutes.

Thank you, Madam Chairman.

Proposed amendments

Clause 17 (see Annex III)

Clause 26 (see Annex III)

CHAIRMAN (in Cantonese): I now call upon the Secretary for Education and Manpower to speak on the amendments moved by Ms Cyd HO as well as his own proposed amendments. However, no amendments may be moved by the Secretary for Education and Manpower at this stage.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, if Members accept the amendment moved by Ms Cyd HO to delete the proposed section 40BR as a whole, those schools failing to comply with the requirement of the Ordinance of establishing IMCs will not be subject to any checks and balances. Thus, the Government will not be able to enforce the stipulations of the legislation.

To protect the interest of students and to exercise the power of overseeing the schools, the Permanent Secretary's power to cancel the registration of managers and appoint persons to be managers of schools must be preserved. For schools failing to establish IMCs before the deadline, the arrangement may help them to do so.

In exercising his or her power to appoint managers, the Permanent Secretary will appoint parent representatives and teacher representatives returned by election as managers. It is hoped that their participation in school governance will help SSB understand and realize the merits of establishing IMCs, removing worries of SSBs about the feasibility of implementing their education beliefs, so that they will accept the new system. Schools dissatisfied with the Permanent Secretary's exercise of his or her power of appointing managers may lodge appeals to the Appeal Board.

I will propose amendments to the proposed section 40BR later. To dispel the worries of SSBs, we propose the deletion of a provision allowing the Government to terminate any agreement between the Government and the SSB in relation to the sponsorship, when aided schools fail to comply with the requirement of establishing IMCs. We will also set out clearly that managers appointed by the Permanent Secretary shall hold office until the term of office for which he or she is appointed expires; or until the IMC of the school concerned is established, which ever is the earlier.

A consequential amendment to clause 26 will also be made. We consider this a relatively mild approach that involves no criminal penalty. The proposal only involves the inclusion of other persons, even elected representatives from parents and teachers, in the SMC. This may facilitate schools in accomplishing the effects of SBM, creating the conditions for implementing reform to school governance and the expeditious establishment of IMCs. Therefore, we should

not remove a mechanism that is conducive to resolving contradictions and reconciling disputes.

Finally, I have to reiterate that the Government opposes the amendment proposes by Ms Cyd HO. I implore Members to vote against her amendments. Otherwise, the entire reform will be reduced to a *de facto* optional scheme, failing to bring SBM into full operation.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendments moved by Ms Cyd HO as well as the Secretary for Education and Manpower's proposed amendments.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, this morning, someone quoted what Dr YEUNG Sum and I in the Democratic Party had said several years ago, saying that we were the people who had supported legislating on the democratization of school management and on SBM but later changed tack. I invite him to open his eyes wide and look at section 40BR of the Bill. He will then understand why the Democratic Party opposes this Bill on SBM and that the focus of the Bill in fact does not lie in enabling parents and teachers to join SMCs but to mandate schools to establish IMCs, or else be subjected to the penalties prescribed in section 40BR.

On this piece of legislation on SBM, I would describe section 40BR as a provision on "school-based terrorism". Why? The effect of the original provision is that, if a school or a group of schools fail to establish IMCs after five years, the Permanent Secretary of the Education and Manpower Bureau (PSEM) can replace all the original managers in a school with managers appointed by the Education and Manpower Bureau, then require according to the law that all appointed managers must act and vote according to the directions of the PSEM. In fact, this amounts to taking over other people's schools.

However, initially, section 40BR did not stop here. It went on to say that the Government would cancel in one stroke all subsidies to the sponsoring body concerned and all agreements in relation to the management of the school because the school concerned failed to establish an IMC. In fact, this means that the taps will be turned off. That is to say, the school premises will be taken over and subsidies will be suspended. This is in fact hardly different from closing down a school. However, what wrong have the SSBs and these schools done? They can be good schools or renowned schools and even the parents and teachers in these schools may not necessarily support the establishment of any IMCs. However, merely because a school fails to establish an IMC in five years, the Government is already in a position to change the composition of the management committee of a school, to make changes to the power to administer a school and terminate its subsidization. Can we not call this a kind of "school-based terrorism"? Is this tactic harsh or not? Should we use this kind of harsh and heavy-handed tactic to deal with schools that fail to establish IMCs?

Members, there are still controversies in the education sector as to how SBM should be implemented. Some people hold that the approach of establishing IMCs should be adopted; others suggest that the methods spelt out in the Education Commission Report No. 7 should be adopted. Before the various methods are implemented and tested on any significant scale, the Government has already drawn up such a provision. Concerning this provision, the Government even said that it could help resolve conflicts. Have Members heard about such a joke? Someone pointed a gun at you, saying that doing so will help resolve conflicts. This is just like the invasion of Iraq by the United States. First, an army was stationed there, the Government was reorganized and the army would be withdrawn afterwards. Through this section 40BR, the Education and Manpower Bureau will station an army, reorganize and establish a puppet government and will withdraw only after an IMC is established. In fact, this pattern is the same as the invasion of Iraq by the United States. Is this not "school-based terrorism"? Does this have anything to do with democracy?

Therefore, those people who spoke and criticized us this morning, saying that our opposition to the Bill is perplexing should listen carefully. When we initially supported the addition of parents and teachers to SMCs, it had never

occurred to us that things would come to this pass that should schools fail to establish IMCs, they would be punished.

The Secretary said just now that no criminal offence is involved. Well, for a school that has been established for over a hundred years, a takeover by the Government will be crueler than being charged with any criminal offence. Just imagine, on finding such a provision, will SSBs feel convinced? Furthermore, the Government did not just stop here but added one more line, saying that the Government shall not incur any civil liability because of this (that is, for taking over the schools of the SSBs). That is to say, never think about taking legal actions against the Government. Just change our angle, put ourselves in other people's shoes, and about this: These SSBs operate some 100 or 200 schools. In the most difficult days of the education sector in Hong Kong, in areas not reached by Hong Kong's education system, these SSBs have operated schools for several decades and gained a little renown and won support of parents. Nowadays, the previous practice of operating these schools is protected by the Basic Law. However, the Secretary has now drawn up a piece of legislation to require schools to change their original ways of administration to that specified by the Secretary within five years, otherwise, harsh punishment will be meted out, the managers will be replaced and their power of administration will be usurped. It was even initially intended that the subsidization to these schools could be withdrawn. Do Members find this terrifying? What has this got to do with democracy?

The Democratic Party was able to see the rigid nature of this piece of legislation, so in the end, due to the opposition from the legislature, the Government deleted the provision on withdrawing subsidization. However, deleting the provision on withdrawing subsidization is of no help to solving the problem. Just think about this. Those schools are hundred-year old establishments and five years later, the Secretary will go so far as to replace all their managers and appoint his own puppet managers merely because they have not established IMCs. In fact, the question of whether subsidy will be provided is already irrelevant, since the schools will no longer be their former selves. By that time, Secretary, do you think the students and their parents will let you off lightly? To them, all of a sudden, their beloved sponsoring body and beloved school, as well as the people whom they meet in church will no longer be there, and a group of people coming out of the blue will have taken their places in managing the school. The only thing that remains the same is the name of the

school. Secretary, do you think this will work? Do you think this will help resolve contradictions? Do you think that a school will be happy because no criminal penalty is prescribed? Do you think that doing so will protect the interests of its students?

What is even more absurd is that after the Secretary has added some people to the SMC, these people will depart only after an IMC has been established with their assistance. This is what is written in the legislation. Is the Secretary aware of the requirement that 60% of the managers in the IMC have to be appointed by the sponsoring body? Since the sponsoring body has already refused to establish an IMC, it will of course refuse to appoint 60% of the managers to the IMC. In this way, the Secretary will never be able to establish the so-called IMC in the school. As a result, you will never be able to leave. This situation is even worse than the stationing of American troops in Iraq because what the Secretary is doing is outright occupation. Secretary, do you think this will work? Do you think others will accept this? Secretary, please have a look at this provision first. I really do not know how it could have been written in this way.

In reality, it is not possible to do so. Why do we request that a buffer mechanism be established? The aim is to avoid such a situation from arising and avoid section 40BR from becoming a reality. That is why we request that the provision be deferred. However, the Secretary even suggested that we had the elections in mind in requesting the deferral. If that is the case, then what is the Secretary thinking about? Well, may be you want to have a fight. However, some will still say that in having a fight, one has the elections in mind, since it is possible that I will be involved in the fight. It seems that I may just as well disappear into thin air to avoid getting exasperated.

Therefore, Madam Chairman, I am in total and unreserved support of Ms Cyd HO's request to delete this provision. In fact, Ms Cyd HO certainly does not have the conditions to have the provision voted down. However, she clearly pointed out that insofar as this provision is concerned, the Secretary could still give schools a hard time by means of other powers vested by sections 22, 82 and 83 because these powers date back to the colonial era.

In fact, in this piece of legislation on SBM, there are new swords as well as old ones, so the PSEM has at his disposal a wide array of swords, and all sharp ones at that. Just change our angle in looking at the issue, will other people feel convinced? Many teachers have approached me on hearing that the sponsoring bodies of their schools will no longer operate schools and asked me what the future holds for them. When there are clashes, what can they do? Will their jobs be secure? If the schools in which they teach are not willing to establish IMCs, they are not sure if their job security will be affected. This is the way that they look at this issue. Therefore, this is the reason for my seeking to work out a reconciliation in the education sector and propose an amendment. However, my amendment has already been voted down and now we have come to section 40BR, which is a provision providing for school-based terrorism.

Secretary, please look closely for once and put yourself in others' shoes. Do not merely read out your script in opposing Ms Cyd HO's amendments. Think about it and let me tell you that five years later, when this piece of legislation has to be implemented, it is doubtful if you will have the courage to implement it.

Thank you, Madam Chairman.

MR JASPER TSANG (in Cantonese): Madam Chairman, I thought that according to the convictions of the Democratic Party, Mr CHEUNG Man-kwong would support the military actions taken by the United States against Iraq to introduce democracy, but at least he has clarified this point. Nevertheless, it is said that "When someone's words are warped, I understand wherein the person has strayed. When someone's words are evasive, I understand how the person has been pushed to his limit"¹. In his address, Mr CHEUNG attempted to efface his abrupt change of tack in his support for SBM all the time, but the more he tried to gloss over this matter, the darker it became.

In fact, put very simply, if the proposals put forward cannot solve the problem of SSBs' steadfast refusal to implement SBM, then what solution is available? Can deferring its implementation be the solution? He talked about reconciliation, but how can we go about it? If some SSBs are steadfast in refusing to comply with the requirements of the Bill and refuse to implement the

¹ From *The Chapter on Gong Sun Chou, Mencius*

measures on SBM, it will be impossible to do so. In that case, how can reconciliation be achieved? Many years ago, when Mr CHEUNG was very eager and active in pressing the Government to legislate on the implementation of SBM, did it occur to him that if any SSB steadfastly refuses to implement SBM, could this issue be resolved simply with the word "reconciliation"? Thank you, Madam Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, we in the Democratic Party oppose the United States' invasion of Iraq. There is no need to take this opportunity to start a fire on this issue. The problem lies in the fact that when we originally supported the addition of parents and teachers to SMC, on the basis of the contents of the bill on SBM submitted at that time, we were given to understand that even if a SSB did not establish any IMC, matters would not come to this pass of threatening arrests and lock-ups, nor to such a pass that the managers will be dismissed and replaced and subsidization terminated. If Mr Jasper TSANG is of the opinion that the support for SBM and for the establishment of IMCs has to go so far as to mete out dire punishment according to section 40BR should anyone fail to implement them, and he can of course say so, but please just think about this: Should we do things this way?

In fact, a number of methods can be adopted to implement SBM and the results of management will be just as good. If there is obstinate opposition to its implementation five years later, what should be done then? Simply defer its implementation. How do we know that the methods of implementation adopted by SSBs in these five years will definitely be wrong? As things now stand, this is not so. At present, no matter if the method of implementation is right or not, and no matter if the administration of a school is good or bad, as long as the direction of establishing IMCs is not followed, section 40BR will be invoked to address this. This approach is tantamount to styling oneself as the *Bible*, proclaiming "I am the Way, the Truth and the Life". If anybody does not follow, then no government subsidy will be available. Of course, things should not be like this. If the Legislative Council, as the legislature, heard views that

express strong opposition, may I know if we should address them or not? We have to address them, right?

The Legislative Council is precisely the venue where contradictions have to be resolved. If we are fully aware of the conflicts and that they will occur in ideas and actions, is it possible not to address them? This is not the approach that the Government should adopt, nor is it the intention of the legislature in enacting any legislation. If it is believed that IMCs will work well and can be implemented, that is fine; if there is nothing wrong with the implementation methods adopted by SSBs, we can also lend an ear to them, can we not? This is not a life-and-death issue. Even though the Democratic Party says that teachers and parents should join SMCs, is this a life-and-death issue? This is not an issue over which we have to fight to the death, is that right? Nor is there any need to go to such lengths as to adopt an approach of a life-and-death struggle and fighting until one party falls, as provided for in section 40BR. This will not work.

I repeat, Secretary, please take a look at section 40BR again. It should be withdrawn.

MR JASPER TSANG (in Cantonese): Madam Chairman, I have gone over section 40BR again and again but could not find the words mentioned by Mr CHEUNG Man-kwong: "threatening arrests and lock-ups, meting out dire punishment". In talking about fighting till one party falls, it seems that some people are looking upon SBM as a life-and-death struggle. Should SBM be implemented, they will then perish. Therefore, this has become a life-and-death struggle. Unfortunately, Mr CHEUNG Man-kwong has sided with SSBs and considers the implementation of SBM as a life-and-death struggle.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, section 40BR is in fact a sword. In this piece of legislation, sections 22, 82 and 83 are the other swords of criminal offence and Ms Cyd HO has already talked about them. Just ask the Legal Adviser of the Legislative Council and you will know what the consequences are if the management of a school is regarded as

unsatisfactory but the school refuses to comply with the directions. Members can find this out for themselves.

MISS MARGARET NG (in Cantonese): Madam Chairman, I do agree with Mr Jasper TSANG that this is a matter of life and death. What matters most to human beings? Survival or autonomy? If Members agree that freedom is more important than life, and that one can no longer survive without autonomy, then section 40BR is truly crucial. As pointed out by me earlier during the Second Reading debate, this clause is crucial to the entire Bill. The Government's attitude is that, regardless of the amendments introduced, this clause will at the most allow only minor deletions. By all possible means, it is here to stay, why? This is because it is meant to seize power. Schools have to set up IMCs on their own, or else they will be mandated to do so.

I cannot help asking this question: Is the objective of the Government to promote SBM or set up IMCs? It is because if the Government's objective is to promote SBM, the Government should first ask these questions: Is the management of a school good or is the school well managed? Can parents or other parties take part in school management? All these issues have to be examined in the first place. Second, the Government should examine whether IMCs will definitely function well? Is it true that IMCs can function like a panacea that can cure all illnesses instantly? Do IMCs necessarily guarantee good SBM? Not necessarily so. After going through the Bill and listening to today's debate, I find that nothing has been mentioned as to how to ensure IMCs function satisfactorily.

Let me cite another example. We all know it is necessary to set up Owners' Corporations (OCs). It is because if a building is not managed by an OC, it will be difficult to identify the party who should be held responsible in case of an object falling from the building and injuring someone. It is therefore necessary to legislate. However, the purpose of enacting legislation is to enable buildings to set up OCs. We have not yet reached the stage that the setting up of OCs is compulsory. We have learned from our experience that some OCs are functioning well and the management of their buildings are well on track. However, some OCs have brought us great disturbance for there have been quarrels every day. We can see that many of these cases were brought to the Court in the end. In other words, OCs can be either good or bad. So, in this

immensely thick book of provisions, which one can ensure that the setting up of IMCs is good? The answer is none.

Is it true that the strongest opposition to the legislation of SBM has come from the worst SSBs? Apparently not. Moreover, it seems that the strongest opposition has come from the best SSBs. So, why do these SSBs have to object and why did the Government fight back the opposition from these SSBs? Why does the Government not trust that these schools, which have been well managed without any problems, can function well even without IMCs? In short, this Government Bill seeks to make it compulsory for schools to set up IMCs, whether the schools are good or bad. All schools, whether or not well managed, have to set up IMCs. Should they fail to do so, the Government will set up IMCs for them.

I would like to know what IMC is and what purposes it serve. It seems like I am witnessing a fleet of wooden horses marching into the school. Madam Chairman, I am looking at section 40AW which provides for the composition of an IMC because I want to find out the powers, composition, and so on, of an IMC. It transpires that everything depends on the constitution of an IMC, such as the origin, composition and operation of IMC. So, what is section 40AW about? It reads, "(1) An incorporated management committee shall (a) have a written constitution which is approved by the Director; and (b) conduct its affairs in accordance with its constitution. (2) The constitution of an incorporated management committee shall not be amended unless prior written approval of the Director is obtained. (3) The Director may, upon application in such manner as he may specify, grant an approval for amending the constitution of an incorporated management committee. (4) The incorporated management committee shall, as soon as practicable after the approval of an amendment to its constitution, lodge a copy of its constitution as amended with the Director." In other words, the constitution, under which an IMC is operated and composed, has to be approved by the Government.

Let us look back at section 40AH, a general requirement on composition. At the beginning, it is stated clearly that: "(1) An incorporated management committee shall, subject to the other provisions of this Part, be constituted in accordance with the constitution of the committee." The constitution referred here is the same as the one referred to in section 40AW read out by me just now. As the constitution is a requirement of the Government, the composition and operation of an IMC will be dealt with according to the constitution. There is

no need for me to read out every related provision. In short, the relationship between an IMC and the Government is intricate, and the former is obliged to be subject to government control.

I do not wish to describe it in an exaggerated manner — though I sometimes find it somewhat chilling when I think of this provision. As I explained this morning, it does not mean that the Government will definitely control a school once an IMC is established. It is just that whenever the Government wishes to exercise control, the wooden horses will always be ready for they are already inside. This is the spirit of the Bill. I very much agree that in order to enhance co-operation between both parties, schools should strive to co-operate and to be open, transparent, and be ready for discussion. However, this is not the spirit of the Bill. I even heard many people complain this morning that it is not enough to have just one representative from the parents and there is nothing much the representative can do. So, what is the purpose of such an arrangement? The Bill seeks mainly to make it compulsory for schools to set up IMCs. This is what I have been talking about. The composition of an IMC must comply with the constitution stipulated by the Government and the Secretary. Under the constitution, the Government may, when necessary, exercise a high degree of control through the IMCs. As such, the Government's focus of attention is not on whether the IMCs can operate smoothly or whether fights erupt every day. Actually, this is not a matter of great concern to the Government. What the Government's concern is the compulsory establishment of IMCs.

Under such circumstances, Madam Chairman, I find that this is the only problematic provision in the whole Bill. So, it is most desirable to delete this provision. Frankly speaking, I do not have any opinion on other areas such as the IMC plan, and so on. Just go ahead if it is not infeasible! As long as this provision exists, excuse me, the Bill will impede freedom and deprive non-governmental organizations of their autonomy. Insofar as upholding autonomy and freedom at the non-governmental level is concerned, the Bill is extremely terrible. Therefore, I will firmly oppose it.

MR ALBERT HO (in Cantonese): Madam Chairman, despite Mr Jasper TSANG's remark that there are no such words as "arrests" or "lock-ups" in the clauses, I can tell Members that the exercise of the so-called mandatory power can make a school eventually close its gates and lock its doors. As regards the

argument that there is no dire punishment, it can indeed be imposed by simply entering or taking over the school. For a SSB, this is tantamount to the imposition of the heaviest penalty — a death sentence. Is such a penalty not heavy enough? Actually, the crux of the Bill lies in its mandatory nature.

Very often, the Government should exercise reasonable supervision over the governance of enterprises, professions, and the like. There is nothing wrong with it. But how should supervision be carried out? It is imperative that rules laid down must be logical and reasonable, a clear target is achievable, and the sanctions imposed must be proportional. This piece of legislation has presently provided a framework, called IMCs, to enable it to be regulated in a specific manner. Under the law, all schools have to set up IMCs and be subject to various restrictions under the specific mode of regulation. Although it is not criminal for a school to refuse setting up IMCs, it might end up being seized and eventually taken over by the Government.

This is related to the freedom to organize activities at the non-governmental level, as stated by Miss Margaret NG earlier. We simply cannot help asking this question if we re-examine this issue: Is the Government forcing the people to exercise their freedom of association? Why did I raise this point? This is because I remember an amendment proposed in 1979 during the deliberations on the Building Ordinance (sorry, the amendment should be proposed in 2000) required that all owners' committees should be turned into Owners' Corporations by way of "midnight transition" so that the latter would assume all responsibilities. For the sake of improving building management, Owners' Corporations should be held responsible.

We had a lot of doubts at that time. I even asked the Government how it could force someone to set up corporations. This is because meetings will become mandatory should the setting up of corporations be made mandatory under the law. Otherwise, members of the management committees will be required to assume liability, including personal liability, should problems arise. Legal advice was sought after we had discussed for some time, and both the legal advisers from this Council and the Government seemed to share that the freedom of association might be infringed because freedom of association also dealt with the act of making association compulsory, also considered to be an infringement of such freedom. While I have certainly not studied this issue in an in-depth

manner, I think I am justified to feel concerned. The purpose of the Government to adopt such a high-handed approach is to compel schools to organize IMCs to enable the Government to supervise or exercise stringent supervision by other means. In some serious cases, the schools will be sanctioned in the most serious manner. For instance, the Government may appoint new managers to take over them.

Madam Chairman, we must not forget that these schools have their own SSBs. Of course, schools are not necessarily, and usually not, the private property of SSBs; otherwise, the Government will be seen as depriving others of their property. However, Members should remember that many SSBs have been working hard for years to build up their schools. Some religious bodies have even raised their own funds to finance the sites and construction of the schools. This was what happened in the early days. Today, the Government no longer permits the religious bodies to do so; it has even arbitrarily enacted legislation to require the schools to do this and that, or they will be taken over. Is this approach not highly questionable? Actually, is the Government, to a certain extent, depriving someone of the property under his management?

As such, Madam Chairman, this issue involves a fundamental principle. It might even involve a question of principle under human rights law: Is it essential, reasonable and proportional for the Government to adopt this means? Of course, it can justify itself by saying that these schools are government-funded. However, two problems will thus arise. First, if it is the public policy that the provision of funding justifies full supervision, the Government should show me the principles of its policy to let me examine if the Government can exercise full supervision simply because it has provided funding. Second, why are schools operating under the Direct Subsidy Scheme not fully supervised by the Government, given that they receive substantial funding on an annual basis? This gives rise to the problem of different treatment; some schools have even felt that they are being discriminated against. In this connection, does the Government have sound justifications in law to support its approach of treating schools differently?

At this juncture, I have to say that, though not being a member of the Bills Committee and lacking a comprehensive and in-depth understanding of a number of provisions, I have knowledge of the major provisions and policies. I am extremely worried that the Bill will give rise to numerous legal disputes and

lawsuits involving basic rights and freedoms. Under such circumstances, does the Government still insist on passing the Bill despite opposition from all sides? Why?

One of the strongest reasons cited by the Democratic Party for opposing the United States invasion of Iraq years ago was that it opposed the use of the slogan of democracy by some countries in order to invade other countries (I made a speech at that time because I was the proponent of an amendment to Mr CHAN Kwok-keung's motion). This is because many places in the world can become targets of invasion should such a mentality be permitted. To build up democracy for others should not be used as a slogan to justify the invasion of other countries. Similarly, the Government is saying today that it is going to implement SBM and democratize school administration. However, it is trying to force its way into schools by such an unacceptable means as compelling the schools to set up IMCs and mandating the regulation of the operation of the IMCs and reorganization of the SMCs. In the end, some schools will be punished seriously by heavy penalties. This is utterly unacceptable to us.

MR SZETO WAH (in Cantonese): Madam Chairman, I said during the Second Reading debate that this legislation, dealing with SBM, is indeed a conspiracy. Our current discussion has precisely touched upon the core of the conspiracy, for it will be compulsory for schools to set up IMCs independent of SSBs. A school failing to do so will be taken over by the Government within a definite period. In my opinion, the Government has plotted this conspiracy to achieve its aim of decentralization, separation, isolation, infiltration, seizure of power, and eventually, intervention and control, through setting up IMCs detached from SSBs. Why is the setting up of an independent corporation so important to education? Why is it necessary to replace the managers of a school with someone listening to the instruction of the Permanent Secretary should the school fail to set up an independent IMC within a specific period? Should that happen, the Government will truly be seizing power from the school progressively. Therefore, I have justification for saying that the Bill is a conspiracy.

CHAIRMAN (in Cantonese): Mr CHEUNG Man-kwong, you will be speaking for the fourth time.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, my additional question is: What criminal offence will be committed or on what grounds will imprisonment be imposed should a school fail to set up an IMC? Actually, section 40BR, the provision mentioned by us earlier, is newly added to the Education Ordinance to regulate schools.

In examining this piece of legislation, we found that there was another means to regulate a school. Under section 82, the Permanent Secretary may, if it appears to him that a school is not being managed satisfactorily, cancel the registration of the school. Subsequently, managers of an unregistered school may be sentenced for two years' imprisonment or a fine of \$250,000 for committing a criminal offence. In other words, schools can be dealt with under section 40BR too. We have been told by the Legal Adviser of this Council that there is another way to achieve the same purpose — sanctions may be imposed under sections 82, 22 and then 87. Therefore, I hope my friends and Members can understand that the Bill can be no joke in enforcement. I have to read the note just passed to me.

MR JASPER TSANG (in Cantonese): Madam Chairman, I have in hand a document issued by the Hong Kong Professional Teachers' Union (HKPTU) on 30 April 2000 in response to a consultation paper issued by the Advisory Committee on School-based Management. I have no idea whether Mr SZETO Wah and Mr CHEUNG Man-kwong have approved of this document.

Part III of the document was entitled "the composition and operation of Management Committee". In paragraph 10.1 on "registration of corporations — the views of the HKPTU", it reads: "As it is necessary for Management Committee to be empowered by the law with legitimate power and responsibilities to accomplish the missions of leading the school and making decisions, it is necessary to amend the Education Ordinance to define clearly the legal status, liability and the scope of powers and responsibilities of Management Committee."

I find the comparisons separately made by Miss Margaret NG and Mr Albert HO between schools and Owners' Corporations responsible for building management inappropriate. Insofar as building management is concerned, the owners' committees referred to by us or Owners' Corporation are responsible for managing their private property. They may manage by whatever means, as long as public interest is not affected. The Government should not exercise excessive intervention. Neither is it the intention of the Government. However, the school we are now talking about is an aided school managed by a SSB. As hastily pointed out by Mr Albert HO just now, the SSB is not managing its private property. Instead, it has executed an agreement with the Government, and under this agreement, education services will be provided to the public with public funds. Under such circumstances, it is irrelevant to compare a framework providing services on the basis of such an agreement with an organ managing its own property in a specific manner.

MS EMILY LAU (in Cantonese): Madam Chairman, I rise to speak in support of Ms Cyd HO's amendment. As I questioned earlier, even if the Secretary is given enormous rights should the Bill be passed and Ms HO's amendment fail, will such a sharp sword really work? Mr CHEUNG Man-kwong and teachers might have probably asked this question before the sword is drawn: "Will the schools still exist?" This is a rice-bowl issue. How many teachers and parents are there in Hong Kong? How many problems will arise because of those uncertainties? So, should the sword be drawn, and will it work?

Moreover, I believe the Secretary is aware that some schools have recently been told that their funding will cease because of under-enrolment. As a result, the schools launched their own fund-raising campaigns, even in markets. Many people were seen dropping \$100 and even \$1,000 notes into the donation boxes (The Frontier was really full of envy on seeing this). It is evident that schools are playing an increasingly active role in safeguarding what is considered by them very important. What will happen if the schools can foresee their future? Madam Chairman, there is no way that the schools can be forced to succumb to the Government's wish, or else there will never be happiness. Moreover, conflicts might arise too.

Mr Jasper TSANG kept on talking just now. I am very thankful to him, for at least I can debate with him while he is here. This is so very different

from the beginning of the debate when only a few Members spoke. Actually, the Secretary is very lonely. The fact that he has secured so many votes has led him into believing that many Members will speak in support of him. It turned out that no one chose to speak. Fortunately, there is Mr TSANG. He is really remarkable; and he is eloquent too. I think the Hong Kong Progressive Alliance (HKPA) should join in the debate. Despite its overwhelming support for the Bill, no Members of the HKPA have joined in the debate. The Secretary was left alone to deliver his speech. It seems to me the HKPA has not spoken at all. Sometimes I find it really strange. People should have a lot to say if they have been so eager to offer their votes and pass every proposal. Surprisingly, no one has spoken; only Mr YEUNG made a few remarks. I am glad that Mr TSANG has responded to the questions one by one. This is what debate is all about. Madam Chairman, this is why I think he is remarkable.

However, Mr TSANG asked: "Reconciliation? What happen if there is no reconciliation?" I would like to ask the DAB a question in relation to this one. There is going to be no reconciliation. Some SSBs have made it clear that they will not act according to the Government's wish. We are not speaking for them. However, in the course of enacting legislation, we have to listen to views from all sides. We have to strive to find the point of equilibrium whatever Bills we are dealing with. We must not proceed if we know it very well that serious problems will arise. The Bill is going to be read the Third time in a short while. The debate on the Bill has lasted more than 10 hours. I do not know whether it will last several hours longer. Madam Chairman, the problems have only just begun.

I really want to ask Members of the DAB how we should treat those SSBs. Are we going to say to them, "You have no choice but to do it; the sword is right here"? In case of any setback after a couple of years, is the Government going to draw its sword or gun or whatever? Is this the solution?

I suppose we can look at the landfill charging incident. Despite the fact that the relevant legislation was passed in 1995, its implementation was postponed for eight years after the landfill was surrounded by objectors for two days. Even the authorities concerned do not want to see any conflict. Now that the DAB is so supportive of the Bill, what will it suggest the Government to do to settle the matter? Is it the belief of the DAB that there is nothing more to

say and, instead of reaching a compromise which is clearly impossible, the possible options are to fight or whatever. Madam Chairman, Mr Jasper TSANG used to be a school principal. Insofar as this area is concerned, he should be more knowledgeable than any one of us. We can at most learn these arguments from books. Yet, we have no experience in managing a school — Mr TSANG is currently not a school principal. Is he a school supervisor? I have no knowledge of his present status. Madam Chairman, given his years of experience in the education sector, Mr TSANG should all the more be able to understand the reasons why SSBs, teachers and principals are so strongly opposed to the idea. Yet, the DAB has been very supportive of the Secretary. So, what can be done to settle the matter? Is there any way to cushion the effects? Is the DAB going to show its support for the Secretary by telling him to proceed and draw out his gun or sword when required? Should our education problems be dealt with in this way?

We are not pinpointing this Bill only. Madam Chairman, insofar as other Bills are concerned, when it is evident that all parties are prepared to fight, weapons drawn, what should we as Members of this Council do? Of course, someone will ask, "Does it work by acting in such a rude manner?" Not necessarily. We have to strive to find the point of equilibrium to reduce conflicts in society, and prevent parents, schools, SSBs from getting so worried. Some people are even unsure whether they can still keep their rice bowls in a couple of years. How can parents stop themselves from growing extremely anxious should the schools attended by their children refuse to listen to the Secretary because they believe his approach will not work?

I would like to ask the DAB this question since a number of Members of the DAB come from the education sector: What will you suggest to enable Hong Kong society to face up to this possible conflict? Maybe Members of the DAB will say: "Don't be afraid! Go! They will surely surrender! This is the only way!" But what can be done to settle the matter? Not only the DAB can make suggestions, any Members supporting this Bill should come forward to express their opinions. Of course, some people will say that the conflicts we are talking about will never occur because the SSBs will probably not put their words into actions. This is one suggestion. We will know who is right and who is wrong in the future. Nevertheless, I believe Members are obliged to give people outside this Council an assurance like this: "The Bill has now been passed. In response to the suggestion and our anticipation that something will happen, the

authorities concerned have already suggested ways to deal with it. In short, Hong Kong's harmony and stability will not in any way be jeopardized."

I think Members should express more of their opinions. I hope Members can reconsider all these questions carefully and lend support to Ms Cyd HO's amendment. This will give all parties room to relax instead of an intense sense of pressure or a feeling that conflicts or confrontations will occur within a couple of years.

DR YEUNG SUM (in Cantonese): Madam Chairman, Mr Jasper TSANG said earlier that the Democratic Party had supported the United States invasion of Iraq, perhaps let me respond to that briefly. At that time I led a group of people to the United States Consulate to stage a protest against the United States invasion of Iraq.

Madam Chairman, I agree very much with Miss Margaret NG when she spoke earlier on section 40BR. This is the core issue which has sparked off the most heated controversies and most contentions from the SSBs. Both the SSBs and the Democratic Party do not oppose teachers and parents taking part in school management. In contrast, the Government is making use of section 40BR and constitutions required of IMCs to try to usurp the powers to direct, control and manage schools. The Government may not exercise such powers, but when it so wishes, it can transfer the powers into its own hands. As Mr LEE Cheuk-yan has said earlier, what the Government is doing is like taking a child away after someone has raised it up. This is a true reflection of the worries of the SSBs.

I studied matriculation class in the Methodist College in Yau Ma Tei. Recently, some representatives from teachers and parents were elected to the SMC of that school. They have an election system in the SMC. They came to see me with the person in charge of the SMC and talked with me about the removal of the school. As we know, if we want to go to the Methodist College, we have to take a path from Gascoigne Road. The school wanted to relocate its campus to a site in the new reclamation for the site is larger and it can house both the primary and secondary schools. That is an ambitious plan they have in mind. But the teacher and parent representatives opposed this idea. In the end, the SMC respected this view from a minority and decided to maintain the *status quo* in the hope that there could be some other leeway for development later on.

The reason for me citing this example is that I would like to tell Members that participation in a democratized school governance does not necessarily require converting a school into an incorporated body and through a constitution required by the Government and transferring the power of operating the school into the hands of the Government. With respect to this Bill, Miss Margaret NG has not spoken a word on it, nor has she voted. But she had spoken and voted on that part of the Bill. Actually, this is the crucial part of the Bill. I hope the people of Hong Kong will understand this point. Mr SZETO Wah has also said that there may be other considerations, but I do not wish to repeat what he has said. I just want to make it clear that the Government should not try to usurp and centralize powers under a false pretense of democracy. There are lots of areas which the Government is practicing a centralization of powers. I do not know if it is because of the Accountability System of Principal Officials that all the Directors of Bureaux are trying to amass and centralize powers. One can see this in urban planning, housing, education, medical and health care, and so on. The powers which used to be vested in some of the advisory bodies are now in the hands of the Directors of Bureau and that also illustrates my point. Therefore, I will lend my full support to the amendments proposed by Ms Cyd HO.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, actually I really do not understand, after listening to all these talks, why all schools, including those schools operated by religious organizations, should have to adopt the method suggested by the Government, that is, to turn the schools into bodies corporate? Ms Cyd HO raised a point long ago and that is, if the method adopted by SSBs is better than that of the Government and it is also better in terms of operation, then why are SSBs not allowed to stick to this well-established practice? Up to now, no one has answered this question. What in fact is wrong when the previous practice is used? Mr Jasper TSANG has said that a contract is involved. That is true. There does exist a contract between the operators of a school and the Government, and that is the Basic Law. Let us take a look at Article 141 para 3 of the Basic Law again. It says, "Religious organizations may, according to their previous practice, continue to run seminaries and other schools....." These religious organizations may run schools according to their own practice, but why are they not be allowed to do so now? That proves one thing and that is, all of these are part of a plan. If there is no plan, why should people be

forced to do it? Mr SZETO Wah has made it clear that the Government is trying to intervene. This is step number one to making our schools red. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, we oppose Ms Cyd HO's amendment to clause 17 and proposed deletion of section 40BR.

On the face of it, Ms HO's amendment appears to be very democratic, for the deletion of the checking clauses can enable schools to decide whether or not to do it. Imagine our law is no longer binding and there are no checks and balances, what law will it be? What will the world be? I can think of only two scenarios: First, we will be living in heaven where all of us, behaving like a saint, abide by the law and do things on our own initiative, without any restraint. This is certainly wonderful. Another scenario is that we could be living in hell. The existence of laws would make no difference as everyone could act irresponsibly in defiance of them.

Therefore, as pointed out by Mr CHEUNG Man-kwong, a law without checks and balances can be terrible. But which one is more terrible, laws with or without checks and balances? I cannot see why we should find the proposal of imposing checks and balances terrible for it can merely, at the most, lead to a restructuring of the composition of SMCs. In reality, this is the only way to truly implement SBM; otherwise, SBM will merely be an idea that can never be realized.

Ms LAU has been questioning us all day why it is necessary to enact legislation and force others to do things considered good. Actually, human rights, democracy, freedom, and lots of things in this world are good, so why is it necessary to enact legislation to protect all of them? Why is legislation necessary? Is education a good thing? If the answer is positive, why is it necessary for such meaningless things as nine-year compulsory education to be enforced to compel people to go to school? This is actually not the case. If this Bill is not equipped with such a checking mechanism, we might as well call it "Education (Amendment) (No. 1) Appeal Paper 2002" instead of passing it into law.

Let me reiterate that section 40BR is meant for enforcement purposes. In the event that SSBs are reluctant to set up IMCs and submit draft constitutions before the deadline, the Permanent Secretary may invoke this provision to urge them to set up IMCs. The appointment to their SMCs is merely a means of enforcement.

We have spent much time scrutinizing the Bill for the sole purpose of implementing it effectively and more efficiently. I really find it very hard to understand why the assurance to implement the Bill has to be withdrawn. Therefore, I speak in opposition to Ms Cyd HO's amendments.

CHAIRMAN (in Cantonese): Mr Albert HO, speaking for the second time.

MR ALBERT HO (in Cantonese): Madam Chairman, even at this point in the debate, it seems that our Honourable colleagues from the DAB are still unable to grasp a very important point and that is, whether or not this mandatory school governance framework proposed by the Government is absolutely, definitely and totally sound, and if this is not followed, then it will be absolutely, definitely and totally bad.

Now I wish to tell you that things are not like that. If this is not the case, then the Government's efforts in compelling other people to adopt the governance framework that it has prescribed and form IMCs off the same mould is tantamount to imposing unnecessary restrictions on the freedom to operate schools, forcing people to set up an IMC that they do not want to set up, and so on. All these would be a fundamental breach of the freedoms of association and operating schools. If in the view of the Government that its favoured system is absolutely and certainly the best, and so it is forced on others and that it has the support from the DAB or other Members, then why is it not used on the DSS schools? Why? These schools are also getting subsidies from the Government. Up to now, no one can give me an answer. Why is this not adopted in private schools? Well, some people may say that private schools do not receive government subsidies. But why is this not adopted in DSS schools? Why not in government schools? If it is said that this is the best and the very best, then I

have the right to demand that all these schools follow, then they should do the same. Recent events are making me feel all the more worried.

In future the Government will certainly meddle with the social service organizations, for they receive subsidies and government funds. Mr Jasper TSANG said that since they received money from the Government, then they had to follow its orders. By the same token, then Radio Television Hong Kong should be meddled with. Is that what he means? Then, does it mean that these social service organizations, since they receive subsidies from the Government, the Government may submit a bill and their board of directors can likewise be regulated. At most they are allowed to elect two directors. If problems arise, the Government can step in. Should things be like that? I do not think so. Madam Chairman, the reason is simple.

Now the point about this suggestion is if this is all so good in the eyes of the Government, then a statutory model of that should be provided so that people can take part and be encouraged to take part in it, then the good results and the good performance will be shown to the people so that they can make an informed choice. They can then clearly decide whether to join this or not, that is, students can decide which school to enrol. Madam Chairman, a lot of management initiatives and regulations are necessary and even as they may limit freedom, we would accept them. But these restrictions must be reasonable and not disproportionate. Unfortunately, this is not the case with these provisions. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, I speak in support of the amendment proposed by Ms Cyd HO. This is actually a very crucial amendment indeed.

Mr YEUNG Yiu-chung was right. He said that if section 40BR was deleted, in his words, this Amendment Ordinance would be an Ordinance without checks and balances. But the questions are: Why should such provisions on checks and balances be added? Why must a common model be applied arbitrarily to all schools? Why must people not be allowed to make a choice? Without checks and balances, what would be the result? A piece of legislation will exist and so will a framework. Those who like to follow may do so in accordance with all the matters specified in the framework, including greater protection for school managers. If schools choose to do so, then they

can do it. Why must checks and balances be imposed on them? Why must they be forced to do it? If you ask whether it would be like heaven or hell, I would say that without the checks and balances, this would only be a free world of man. So what is wrong if SSBs are allowed to make a free choice?

Earlier on, I watched the news report by the TVB and it was about a response made by the Sheng Kung Hui. Sheng Kung Hui made it clear in its response that it had been a partner with the Government for 150 years and it wondered why this partnership had to be destroyed? What should the ladder be pushed off the cliff? Mr YEUNG Yiu-chung said in a light mood earlier that section 40BR was no big deal and it was only about forming an IMC and that was all. He was putting all these very lightly. But if we look at it seriously or even in an awful light, from a family perspective, this is like robbing people of their wives and daughters. For this is a forceful intrusion into someone's school and seize it, is it not? What is the difference between what is being done right now and what I have said? This is a forceful takeover of a school so that it will no longer be run by the SSB. The Government will appoint members to the SMC and reorganize it. The school will no longer be run by the SSB, not at all. This is what will happen. But why should it come to such a state? Why must the Government be given such great powers by this law? If people do not obey, will there be a forceful intrusion into the school?

Of course, clause 82 which has been mentioned by Mr CHEUNG Man-kwong earlier can also be used to kill the SMC. The power of this clause is lethal. It can obliterate a school by shutting it down. But the authorities may not be able to invoke this clause. Why? For the clause provides that there must be serious problems with school management. This is the kind of situation which calls for the invocation of this clause. However, the Government may say by that time that certain situations can be considered serious problems in school management and so the school will be closed down. It would not make any difference. But the point is, must such a move be taken to take control of someone's IMC? I regret very much the Government's insistence on keeping this power in its hands.

I also learned from the TV report some remarks made by Secretary Prof Arthur LI. He said that the SSBs were so worried about this legislation because they feared that some parents would act like some Members of this Council in that they would aim at destruction simply for the sake of it and put up opposition also for the sake of it. I do not know if Prof LI was speaking from the stand of

the Government when he made those remarks. It is because I recall an official was talking just a few days ago about the number of laws passed this year and that the relationship with the legislature had been good, and so on. So why did the Secretary make those remarks? Actually this is not the first time he is saying that. He said the same thing as he pointed his fingers when he came before the Bills Committee to discuss this Bill. Why is he making the same remarks again today? Does he really think that Members are putting up opposition for the sake of opposition and aiming at destruction because they want to destroy?

I must emphasize that we are opposing in the interest of education while on the other hand, the Government is aiming at destruction because it wants to destroy the ties with the SSBs and it is education which will be destroyed in the end.

Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): I will try to be brief. Madam Chairman, I would like to respond to the speech made by Mr YEUNG Yiu-chung. He said earlier on that section 40BR was a kind of checks and balances in law. I do not think that this is at all correct because section 40BR is not a kind of checks and balances but a kind of regulation. It gives the Government very great powers to restrict and regulate the freedom of some schools. The kind of checks and balances which we normally refer to are those means used to oversee the great powers vested in the Government. The aim is to check, balance and restrain such powers. This is what the term means. However, section 40BR as it is gives the Government a power to intervene in the operation of a school. This is a restriction on the freedom to operate a school enjoyed by a SSB and it cannot be regarded as a kind of checks and balances in law.

Madam Chairman, there is another point and it is also something I wish to talk about briefly. That is, it is on section 40BR which I think is very important and it is also where I have focused my attention a while ago. When I spoke earlier, I mentioned that it had seemed that the most important thing for the Government was to set up these incorporated bodies by all means. But as to how these incorporated bodies were to operate, not much time had been spent to look into the issue. I also mentioned that the owners' corporations (OCs) also

had a lot of internal problems. Mr Jasper TSANG then enlightened me that it was not too good a comparison to make. But I personally thought that it was quite a good comparison because we often heard a lot of disputes in these organizations. I pondered over the question of what could be done to solve these disputes when they became serious. So I looked up the Report of the Bills Committee submitted to this Council by Ms Cyd HO. The Report points out that the Bills Committee has discussed a number of issues, mostly on what should be done about the relationship between SSBs and IMCs and on what should be done when the two hold different views. If our Clerk has maintained the quality which we are so used to and if this Report has maintained a similar level of quality, I would think that the solutions to the problems are not at all satisfactory. There are basically two main points. If a dispute really arises, since representatives of the SSB form as much as 60% of the membership of the IMC, so the SSB may block the passage of any proposal. Just imagine on the one hand the Government gives other managers the power but on the other, they will lose so often. For once they have put forward their views and when disputes arise, the SSB will win by a great margin. So how can such schools operate smoothly?

Another issue is about the disputes within an IMC. That is to say, what should be done about the disputes within an IMC apart from the disputes between a SSB and an IMC. I fail to find any mechanism or system which can avert such disputes when they arise. Moreover, if a person who is elected into an IMC, say, a parent, has a stubborn personality, he may have his own grounds but since he is a stubborn person, no one in the IMC will agree to his ideas. Then what should be done to solve this problem? I fail to find any good answer provided by the Bureau on this. In other words, like I said in the beginning, no matter how great the merit of setting up these IMCs can be, schools should not be forced to do so. After looking closely into the matter, I find that these IMCs are not necessarily a good idea. I also read paragraph 22 of the Report which says: "However, should IMC members hold different views when discussing a certain issue and cannot come to a consensus, they should always refer to the school's vision and mission and act in the best interest of the pupils." So nowadays everyone is talking about the best interest of the pupils. But the last sentence of the paragraph says, "If necessary, PSEM may give appropriate directions to the IMC." This means whenever the schools in Hong Kong have any problems, they should approach the PSEM as soon as possible. So this is also a reason for my thinking that the comparison drawn by me is a very apt one,

for we can find the same thing in the article of association of an OC which says that if the OC has done anything out of inadvertence, performed poorly or failed to solve any problems, it should approach officials of the Home Affairs Department who will help the OC solve its problems.

We often come across similar cases like these in the Complaints Division of this Council. As a matter of fact, if we approach officials of the Home Affairs Department, they do not have so much time to help OCs solve their problems. So I think that the Government is likely to pay a costly price for that in future. I have heard many SSBs say that they will put up civil disobedience. Then I think: If there is anything in the world which will justify civil disobedience, that has to stem from self-defence. When a person feels his life is threatened, it is only natural that he will act in self-defence. When the autonomy of an SSB is vulnerable to exploitation, the SSB will act in self-defence. This is most natural. I do not want to see things like these happen, but I believe if the Government really wants to compel the schools into setting up these IMCs, that will certainly create a negative impact on education in Hong Kong. If the Government wants to take this step and if it sets its mind on it, I believe we have now given our warning. Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, to be frank, now it is the democratic camp which does not know what is going on. When I was thinking, it occurred to me that on the Mainland there is a Catholic church, but because of its ties with the Vatican, then the state established another Catholic church and it is called the Patriotic Church and the former church is driven underground. Now I think.....

CHAIRMAN (in Cantonese): Mr Martin LEE, please get straight to the question of this debate.

MR MARTIN LEE (in Cantonese): Yes, Madam Chairman. I am now speaking on the question of the debate. Some churches have said that they will not follow the requirements as laid down by the Government and they will put up civil disobedience. But this section 40BR will enable the Government to take over a school in the end. Maybe some people will get scared, for they do not know what persons will be chosen by the Government. The Government will

choose people from the same faith, but these people may be patriotic followers of that faith. So a church school will remain a church school, but it will become a patriotic church school. That is what will happen in future.

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I think I had better ask the Secretary a question because I wish to make something clear. Mr LEE Cheuk-yan said that if this Bill was to put into force, it would be like robbing people of their wives and daughters. So, if unfortunately this Bill is passed, the newspapers tomorrow will carry the following glaring headlines: Secretary Prof LI robs people of wives and daughters. Then what would happen to those of us who supported the Bill? For in times as these, it is not right to praise the wives and daughters of people, not to say robbing them of their wives and daughters. People would get scared to death. So this is really a very serious problem.

Members from the Democratic Party keep on saying that this Bill is terrible. They are not only smearing it but making it red. Mr Martin LEE says that when this Bill is put into force, it would make the schools go red. This is a scary remark to make. Why not talk about turning schools green, yellow or blue, instead of turning them red? Of course, there is a special reason for it. That is why I am very surprised when schools are said to be so terrible. Do the SSBs really have no confidence in the convictions they hold in running schools? Will such serious problems arise when this Bill is passed? Will such dynastic changes take place when three school managers are added? Do SSBs still have to stage staunch objections when they hold more than 60% of the power?

Mr CHEUNG Man-kwong says that there are many ways to run a school and they do not necessarily have to be run in that way. I have doubts about this point. It is because, as mentioned by Mr Jasper TSANG earlier, it was Members from the Democratic Party who first demanded legislation. That is to say, even before the Bill was introduced, they had advocated for legislation and they even expressed views on how the law should be enacted and how that should be done. At that time, they lavished heaps of praises on this plan, saying that there would be no democracy if things were not done in this way. So I am very surprised today. For the Secretary has done wonders, he is holding up a mirror in this Bill which reflects how hypocritical the Democratic Party was when it advocated for the enactment of this Bill. It would equally be problematic even if what the Democratic Party was doing at that time was for real. The reason is the Democratic Party has been advocating universal suffrage in Hong Kong all

the time and they are putting more efforts in advocating universal suffrage than this Bill. Many people from the business sector as well as members of the public put forward the idea of balanced participation. This so-called balanced participation also has got two groups, one is the functional constituencies and the other is the geographical elections. Each would take up half of the number of seats. These people said, "Can it be done this way?" However, the Democratic Party says that it must be done in one step and universal suffrage must be put into practice in 2007 and 2008. If this is the case, then it is exactly what Mr SZETO Wah says, that the ultimate goal is to segregate, isolate, subvert and usurp power. I do not know if this should be called mock democracy or bogus democracy.

Therefore, the introduction of this Bill to the Council today has enabled us to tell whether or not we really want to introduce democratic management in the schools or democratic management in society, or to strive for some other goals. Members should be able to see very clearly that these people are putting up such violent opposition against this plan to launch just a little bit of the so-called democratic management in schools. When it comes to society, people do not really have such great disputes on the pace of democratization, whether it should go faster or slower. Many people have said that after a certain period of time, they would be able to accept universal suffrage completely. Even the Basic Law has clearly stated that the ultimate aim is to achieve universal suffrage. So I hope people will not oppose this Bill by terrorizing others, saying that white terror will rein when it is passed.

Mr SZETO Wah has said that the crux of this Bill lies in the independent IMCs which will break away from the SSBs and that this is what will happen after the passage of this Bill. If this is the case, then we should stop talking about implementing full-scale democracy, right? For the crux of the attempt to implement full-scale democracy is to break away from the Government and become an independent political entity. It would be great trouble if this is the case, and I do not see how they can explain it away. Thank you, Madam Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, through you, I would like to ask Mr CHAN Kam-lam, why he described full-scale universal suffrage as an independent political entity separated from the Government? I am afraid I am not so knowledgeable in this aspect. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Mr Jasper TSANG, speaking for the fourth time.

MR JASPER TSANG (in Cantonese): Madam Chairman, thank you. I thank you, because even though you have been frowning and shaking your head, you still allow me to speak for so many times. On the other hand, it seems that Ms Emily LAU is encouraging us to speak more.

Madam Chairman, on robbing people of their wives and daughters, as far as I can recall, there has never been a precedent in the history of education in Hong Kong in which someone's wife had been taken away. However, there is a concrete example in which someone's daughter has been taken away; it happened just not too long ago. The incident took place soon after Secretary Prof LI had assumed his office. A parent did not believe that the education system of Hong Kong could teach her daughter better than he did at home, so he tried his best to keep her daughter at home and took up the task of educating his daughter. Who can guarantee that school education must be better than education at home? Just now, Mr Albert HO has asked repeatedly whether the specified practice of the Government must be good, must be the best? Now, we drive all the kids into the schools and make them pursue academic studies. But is this definitely good? Is this definitely the best? I do not know when the legislation for enforcing such compulsory education was passed, what did the present Members of the Democratic Party or Mr LEE Cheuk-yan think? What did they think about such a compulsory school attendance order?

Ms Emily LAU asked just now, "What would happen if the parties concerned really do not like to establish IMCs?" She said the SSBs should be consulted. Then have they ever asked or considered, "What will happen if some parents really do not want to let their children go to schools for education?" Even if you say that they do have this right, it is still necessary for the Government or the education authorities to send their staff to conduct an examination of the situation, so as to confirm that they really have the ability to educate their own children. This, in effect, is also an intervention of their family life. You cannot simply let a certain father or a certain mother have the entire liberty of educating their own children behind closed doors, just by simply accepting their own undertaking that they can educate their children better than the schools. You cannot do it this way. Why should we need to make it compulsory? Mr YEUNG Yiu-chung said that just now, education is a good thing. Why can we not make all the children want to go to schools by assuring

the best operation of schools in Hong Kong, thereby making such schools targets of envy in the eyes of each and every child? The same thing happens to the parents as well. On seeing their neighbours sending their children to schools, they want to send their children to schools as well. In this way, there is no need for formulating any compulsory school attendance order, right? Should we use such an approach? This is what Mr YEUNG Yiu-chung described as the heaven. Why should we do that? Why should we enact a compulsory school attendance order?

Today an Honourable Member has asked rhetorically in this Chamber: Can you guarantee that this is the best approach? Why should you force others to do this? If this is good, is it necessary to legislate to force others to implement it? Should this Member not also ask: Should the compulsory school attendance order be repealed? I am not sure if the Secretary would respond to this point later on.

Ms Emily LAU said just now that we should not rely on our fierceness. However, from early this morning to the time of delivering her speech just now, she seems to be saying that as long as I can present my fierce face, other people can do nothing about me. As long as I can mobilize fleets of vehicles to seal off the landfills, they can do nothing about me, regardless of how much it is in the interest of the community to implement this landfill charging policy. With this method, the issue has been dragging on for eight or nine years. I insist on my own stance and as I have several schools under my management, you cannot do anything about me if I say I am not going to implement it. See? I can postpone its implementation for another eight or nine years. It seems that Ms Emily LAU has adopted such an attitude. I do not know whether such a scene belongs to heaven or hell.

DR YEUNG SUM (in Cantonese): Madam Chairman, in fact, Mr Jasper TSANG has probably started to argue for the sake of argument. As a learned person with such good eloquence, he surprised us by asking us why we supported the compulsory school attendance order. The order is specified by international human rights conventions, and is implemented by virtue of the Hong Kong Bill of Rights. Basically, the nine-year free education is seen as the rights of the children to receive education from primary school to Secondary Three. When they come to Secondary Three, they are only 15 years old. Insofar as labour policies are concerned, the compulsory school attendance order is also instrumental in preventing them from becoming child labourers. Besides, after

turning 15, children are regarded as having grown up — basically all signatories to human rights conventions have to follow this. Otherwise, after human rights reports are submitted to the court, the Administration will be criticized. Before 15, the children must receive basic education. But after the age of 15, for example when they turn 16 or 17, they can decide for themselves whether they should pursue studies in the universities. This is very basic knowledge. However, as Mr TSANG requested us to reply, I am providing an answer by all means.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Honourable Members, freedom of speech is really a right of Members. However, it is not really meaningful for you to keep repeating the viewpoints. Therefore, I hope you may exercise some self-discipline. Mr James TO, speaking for the first time.

MR JAMES TO (in Cantonese): Madam Chairman, I am not going to repeat the viewpoints, and if I do, please stop me. This may happen as I was not in the Chamber for some of the time.

I find it weird that Mr Jasper TSANG should have no knowledge of the compulsory school attendance order because he used to be a school principle. Regarding the school attendance order mentioned by Mr Jasper TSANG, I had previously conducted some studies on it with the Government. In fact, if a certain parent refuses to let his children go to school, he may convince the Government that he is capable of educating his children properly and give his children a proper education, and then his children may continue to be educated at home. Therefore, it is not essential for the young ones to enter schools established by the Government, or any mainstream education system for education. It is all right if they can receive a good education. If the issue is viewed from this perspective, the two aspects are in fact related. Be they schools operated by churches, or some other organizations, they are left alone as long as the schools are run well. And in fact, there are some schools which have done well for years and are very popular. Mr Jasper TSANG was educated in one of the schools operated by the Sheng Kung Hui. There were no IMCs in the past, but they could still run the schools well, why can they not be allowed to continue their operations under the existing modes? In fact, the

Government is now forcing some schools, albeit doing well, to switch to this mandatory and only mode of operation. They are not allowed not to follow.

I think the main question of today's debate is to require the schools to prove that they are capable of doing well. Therefore, I am very surprised that Mr Jasper TSANG did not know the existence of such exceptions. In fact, such exceptional cases do exist. As far as I know, some expatriates — there are at least several such cases — have successfully convinced the Government to allow their school-age children to stay home to receive a proper education for a long period of time, without being forced to follow the rules by going to schools.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I think it is not at all surprising if there are a few isolated cases in society. Dr YEUNG Sum criticized Mr Jasper TSANG for arguing for the sake of argument. Of course, if you take part in any debate, you have to be supported by reasons. If we do not conduct any debate today, Ms Emily LAU would surely be very disappointed. I also wish to point out that, this Bill has already been discussed for many years in society, we shall no longer cling to the modes of school management that were used at the time when Mr Jasper TSANG was still studying in his primary and secondary schools. We must now move forward gradually. Therefore, I think it is even worse for those who oppose for the sake of opposition.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you intend to speak again?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, maybe I should respond briefly to the comment of "taking away others' wives and daughters". (*Laughter*) Mr LEE Cheuk-yan said I am doing this. Perhaps he does not know quite clearly that priests and nuns of the Catholic Church have to remain single, so priests do not have wives or children. Thus, it is impossible for me to seize their wives and daughters even if I wanted to. It speaks for itself that more often than not, facts are being distorted. But this is the premise of all his arguments.

However, seriously, I hope that Members will focus on one very important issue, the well-being of our children and students. Is it not desirable that parents will join hands with schools in facilitating the studies of students? I believe everyone agrees with this. There can be no denying. The present Bill is straightforward. It is hoped that SSBs will accept that parents, apart from playing an advisory role, are entitled to decision making in SMCs. It is as simple as that. If schools are not willing to do so, we will help them. Very simple, indeed.

Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, a simple response. Catholic clergymen really do not have any children. But Mr LEE Cheuk-yan belongs to the Protestant Church, and the pastors of his church do have children.

MR JAMES TO (in Cantonese): Madam Chairman, Secretary Prof Arthur LI has just said that representatives of parents and teachers can now participate in school administration, and they are only the minority. If this legislation has been escalated to the extent that this mode must be implemented in all schools on a compulsory basis, I believe Secretary Prof Arthur LI will find it difficult to explain why it is not applied to DSS schools too. Other Honourable Members, such as Mr Jasper TSANG has said that, it would be difficult to draw a comparison between this mode and the Owners' Corporation as the latter does not involve public funds. However, DSS schools also uses public funds. If this mode is so good, why do DSS schools not have to follow? Therefore, ultimately, the decision is still very arbitrary. It all depends on what the Secretary thinks is good. If he thinks it is good, then he will describe it as the

only good option, and what he says will become the truth. I am not sure how Secretary Prof Arthur LI can justify his stance in this regard?

MR JASPER TSANG (in Cantonese): Madam Chairman, Members of the Democratic Party seem to think that this is their trump card, so they take up the subject of DSS schools and dwell on it most fervently. I had not intended to speak, as I am starting a DSS school myself, and there may be a conflict of interest.

I believe Mr CHEUNG Man-kwong and Mr SZETO Wah know best what a DSS school is. Mr James TO does not understand it, I do not blame him. The mode of operation and concept of a DSS school is completely different from those of an aided school. A DSS school is a school in which the Government subsidizes the students and the parents involved, that is, the money will pay out to where the student goes. Why should there be DSS schools? There were no such schools in the past. From the way the school is established, it is a private school. This point is very explicit. For example, the school I am starting at the moment, right from the time when the site was first allocated, it is explicitly stated that it would be a private school. However, the parents and the students had once put forward a question, and it was at the end of the '70s and the beginning of the '80s. We had quite a heated argument with the education authorities then. The question was: Their parents are also taxpayers in Hong Kong. Why did they not have to pay tuition fees if they sent their children to those schools operated by organizations permitted by the Government? And why did they have to pay tuition fees if they sent their children to a school which they liked, with educational philosophy and quality that were more to their liking? After arguing for a period of time, a scheme called DSS was introduced. After a DSS school has accepted a student, he will receive his education there, and then the Government will start providing subsidy to the student, so that he does not have to bear the expensive tuition fees of that school. Therefore, the situation is very much different from that of aided schools, or the traditional so-called grant schools. It makes use of a special mode to start a school with the permission of the Government (because not everyone can start a new school), and the Government shall be responsible for paying off all the daily expenses of the school. So the situation is completely different.

MR SZETO WAH (in Cantonese): Madam Chairman, Mr Jasper TSANG also knows what kinds of schools the first DSS schools are. At that time, I was already serving in the former Legislative Council. I fully supported the proposal because all the children of Hong Kong people should have the right of receiving education. No matter what kinds of schools the young people are studying in, they should be entitled to the subsidy provided by the Government. Although the way of granting subsidy is different from that of aided schools, the money involved is still public fund. Why should the subsidy granted as per the school and class is considered public fund, so such schools must follow this? And why is the subsidy granted as per the number of students not considered public fund, so those schools do not have to follow this? I cannot recall who said this (either Mr YEUNG Yiu-chung or Mr CHAN Kam-lam): DSS schools do not need to establish IMCs because they are already very democratic. As they are already very democratic, so the establishment of IMCs will make them even more and more democratic. Is it because Hong Kong is already very democratic, so we are not allowed to chant the slogan of "Returning the political power to the people"? Is it because China is already very democratic, so we are not allowed to chant the slogan of "Bringing an end to one-party dictatorship"?

MR JAMES TO (in Cantonese): Madam Chairman, my viewpoint has already been expressed. It is the opinion on DSS schools stated by Mr SZETO Wah just now.

MR TOMMY CHEUNG (in Cantonese): Madam Chairman, I had intended not to repeat my viewpoints because I had already explained in the Second Reading debate why DSS schools should not be included in this Bill. During the course of deliberations on the Bill, the Government had specifically pointed out that DSS schools would not be included in this Bill when it first introduced this Bill to the Legislative Council. As our discussion progressed to February or March this year, Mr CHEUNG Man-kwong all of a sudden asked an officer from the Education and Manpower Bureau on a certain day, "Why is such a good thing not applied to DSS schools?" And then it led to the whole string of events. So several days later, the Secretary came forward to say that this was not their legislative intent in amending the Ordinance. Actually, I would like to share with Members the opinions expressed by me at that time. As the Government first tabled this Bill to the Legislative Council, it held discussions with us on the

content of this Bill. And when the Government consulted all the SSBs, the DSS schools were not invited to give their views, as the Bill was not intended to include such schools. As we had not listened to their views, how can we incorporate them into the scope of the Bill in the course of deliberations? Is this the regular practice of the Legislative Council? After having deliberated on the Bill for more than 10 months, you want to propose an abrupt change to such a major policy, and want it to become effective immediately because Mr CHEUNG Man-kwong said that why did we not extend the advantages of such a good idea to the whole world, that is, it should be implemented in private schools, DSS schools and all other schools.

Besides, I would like to reiterate that, I oppose this proposal not because I am a school manager of a DSS school. Even if SBM is incorporated into the Bill, it will have nothing to do with my school because it has already converted into a DSS school. But the crux of the matter is: As I have just participated in the process of converting an aided school into a DSS school, I realize the responsibilities and worries involved. There are really many problems. Under such circumstances, the Education and Manpower Bureau had told these SSBs that the Government would not change their way of operating the schools. This has just taken place two or three years ago. Now, the DSS schools have just departed from the starting point, how can you break your original promise and say this is not so now? After discussing something for two years, and you want to change it now. How can you give them the proper justifications for such a change?

Therefore, I feel that, insofar as DSS schools are concerned, can you just stop repeating this all day: Why do we not extend such a good thing to the entire world? Sometimes, certain good food is just suitable for certain people. If other people do not have the right tongue for it, do not force them to take it.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I am so hungry that I really do not want to speak. However, there is one thing I must clarify because Mr Tommy CHEUNG has left out something, which will lead to some misunderstanding.

In fact, at that time, we asked the Government: If this was really a good school management system, why was it only adopted in aided schools, but not in DSS schools as well? Mr Tommy CHEUNG has skipped one remark. The

Government representative said, "Yes, such a good system should also be adopted in DSS schools." Therefore, he agreed to applying it to DSS schools. Later, Mr Tommy CHEUNG opposed it. He said that it had never been mentioned that the legislation would be applied to DSS schools, so the Government could not do that. In fact, at that time, when we mentioned applying it to DSS schools, we were not saying that it should be applied to those schools which had already been converted into DSS schools, not even those which had been agreed by the Government for conversion into DSS schools. We were just referring to those DSS schools which had not even submitted their applications — DSS schools which would be built on certain sites in future. For newly built schools, the Government has neither made any promise, nor any guarantee to them at all. So, for those new schools to be built on new sites, if they want to apply for operation, in the form of DSS schools, the Government will tell them that, as you are operating a completely new school, and all you have now is a piece of land, so in future if you want to operate a school, an IMC has to be established because this is a good system. What I was referring to was that type of schools. At that time, the Government said the schools they referred to were those that would be established after 2010 (DSS schools established after that year). However, as Mr Tommy CHEUNG opposed it, the proposal was scrapped. This is the whole truth, not just part of it.

In fact, I have mentioned several facts here, and I am mentioning only the facts. The Government thinks that this is a good system, so even the DSS schools should implement it. Of course, due to the opposition from friends who have a concern for DSS schools, the plan was cancelled. Secondly, even if we said at that time that DSS schools had to implement this system, we still had to comply with the contract and fulfill the undertakings made in the past. DSS schools that were not subject to the restriction of an IMC would not be subject to that sort of restriction. However, for those with the school premises still not yet built, they would be subject to such a restriction when their applications were submitted. In fact, the regulatory regime for DSS schools at that time was still very loose, and it was not like what is described now.

However, today's contention does not lie in this historical episode. Today's controversy is: As this is a good system, why is this not applied to DSS schools? Even if it is implemented, the Government in fact cannot force the existing DSS schools to adopt it. This is because if the Government forces the DSS schools to adopt it, it will change the promises it has made to them in the past. However, should it be implemented in new DSS schools? Should it be

implemented in those schools which still have not even been granted the sites? Or should it be implemented in schools that are still in the process of submitting applications? This is where the contention lies. If the system is not even implemented in such schools, it is really very difficult to convince others that this is a good system. It will be even more difficult to convince aided schools that if they fail to implement the system by 2010, their school managers will be replaced. This is where the contention lies.

MR JAMES TO (in Cantonese): Madam Chairman, Mr Tommy CHEUNG has just stated the case quite rightly. He said if they had been doing well on their own, why should they be forced into adopting another mode? Therefore, it is not correct to force DSS schools into accepting this IMC mode. In addition, the Government made an undertaking in the beginning, and now with the lapse of just a few years, and it has now started to force others to adopt a new operation mode. The problem we are facing now is: If some churches have been operating schools for over a century and are doing well, why should we force them to make the change? If we vote to pass the amendment moved by the Government (including Mr Tommy CHEUNG, who will soon cast his vote and it is likely that he will vote in favour of the Government's amendment), we are forcing such schools, albeit doing very well, into following this mode. According to the logic of Mr CHEUNG, why is it necessary to compel each and every school to do it this way? Can they follow the example of schools in choosing the medium of instruction, so that some exemptions are allowed? No way! In the case of the medium of instruction, there are more than a hundred schools which have been granted exemption. But no SSBs are allowed to opt for the non-IMC mode.

Please bear in mind that the issue under discussion is not forcing DSS schools into accepting this mode of operation. If this is, it would prove in the opposite that the IMC mode of operation is not the only mode, and that it is only the Government which forces each and every school to follow this mode even if they have been doing well. So this is his viewpoint, which is proving in the opposite direction that it may not be necessary for all schools to follow this mode because, in the case of DSS schools, if they have been doing well, then the Government may allow them to continue with their operations without adopting the IMC mode. If this is really the rationale of Mr Tommy CHEUNG, he may

need to rethink whether it is necessary for him to conduct a more in-depth study and he may possibly need to make a volte-face.

MR MARTIN LEE (in Cantonese): Madam Chairman, the further we debate on the subject, the closer we get to the truth. Now Mr Tommy CHEUNG of the Liberal Party has started to realize the truth; his speech is beginning to get onto the right track and he is getting closer to us now. We would like to remind him, as Mr James TO said just now, that some parents have successfully convinced the Education Department that the education they provide to their children at home is good and adequate. In this way, the Education Department does not have to require the parents to put their children into our education system. This is possible.

Similarly, there are some schools with a history of over a century. Their existing management systems are good, and many parents are just worrying that their children cannot get a place in such schools, so they have been trying to find out ways of securing admission for their children into them. Then why should you make them give up their original systems and adopt yours? This is most unreasonable. Why should you force them to take your meal? Why should they be forced to give up the Western cuisine, and take the Chinese cuisine instead? Or the other way round, they have to give up their habitual Chinese meals and eat the Western way instead?

Thank you, Madam Chairman.

MR TOMMY CHEUNG (in Cantonese): Madam Chairman, regarding making a volte-face, I would also like to say a few words. I can clearly recall that, in March, Mr CHEUNG Man-kwong put forward three amendments to the Government and said that if the Government supported all of his amendments, he would support the Bill. This was what he told me both privately and in the meetings. However, after one or two weeks, he completely changed his stance. I am sorry. I do not have the habit of making a volte-face.

Just now I mentioned the issue of DSS schools. I think other Honourable colleagues may not have listened to my point too clearly. Madam Chairman, let me repeat it. In fact, I feel that the issue of DSS should not be discussed in this meeting because when the Government first introduced the Bill, DSS schools

were absolutely not included. The Government stated that such schools were not included. In the course of deliberating on the Bill or amending the Ordinance — I do not know what kind of attitude the Democratic Party is adopting — after having deliberated on the Bill for more than 10 months, why should they say as late as now that it is so good and we better incorporate it into the Bill when we have nearly finished scrutinizing the Bill, if they feel that it is such an important principle, such a major issue? This is not the procedure of scrutiny I used to know. Therefore, on the question of whether this Bill is good or bad, whether the situation should be regulated to the extent that all schools must implement it, I did say in the past that we needed to strike a balance, which has been achieved after a lot of hard efforts. I appreciate the worries of the SSBs, but I also understand that other parents and alumni in society wish to participate in school management. So how should we strike a balance? When should we make the adjustment? This is no longer an issue of whether someone has made a volte-face. It is very difficult for the Democratic Party and me to come any closer.

CHAIRMAN (in Cantonese): I respect the freedom of speech of Honourable Members. Of course, when you raise your hands, I must let you speak. But I would like to remind you that, you may not necessarily be able to win the acceptance of others even if you keep repeating your viewpoints or deliver your speeches for many times. I think it is better for you to make it as concise as possible.

Mr CHEUNG Man-kwong, you are speaking for the seventh time.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, I have to make a clarification because someone mentioned me earlier. I simply could not help, for I have omitted some of the facts. This was actually what happened.

It was around Christmas eve. Noticing a huge conflict between SSBs and the Government on this issue, we demanded reconciliation between the two parties around Christmas. We were even prepared to support the Bill should an agreement be reached after consultation. Yet, the problem remained unsolved after Christmas. I thus indicated to the Government my willingness to promote reconciliation with the SSBs, yet I could not accomplish my mission empty-handed. In my opinion, the SSBs had raised three most important points

at the consultation meetings. I expressed my hope to the Government that concession could be made on these three major points. I would then seek advice from the Catholic Church, Sheng Kung Hui and other SSBs before contemplating my next move.

Insofar as this point is concerned, the Government has made three concessions. I recall Mr SZETO Wah's remark that we could not possibly discuss with the SSBs empty-handed. In order to forge an agreement, we made three offers to the SSBs during the discussion. The three representatives taking part in the discussion at that time were Dr YEUNG Sum, Mr SZETO Wah and me. It ended up that we could still not reach an agreement with the SSBs at the end of the meeting. Here I would like to answer some questions raised by some of my friends. The crux of the dispute was that the Democratic Party insisted parents and teachers be allowed to join SMCs. Though we refused to make concession on that count, we were willing to negotiate on other matters. Eventually, we came back to look for the ultimate solution. It ended up that I came up with the idea of proposing a resolution postponing the effective date. This was what we considered the ultimate solution.

Therefore, we have not cheated. We have truly made an effort to solve the problem. We ask for amendment because we are not willing to give up our principle of enabling parents and teachers to join SMCs. If we were willing to give up this principle, the matter would have been a lot simpler.

CHAIRMAN (in Cantonese): Mr Martin LEE, I believe you are going to speak for the fifth or sixth time.

MR MARTIN LEE (in Cantonese): Madam Chairman, what I intend to say is very simple. It is most unfortunate that Mr Tommy CHEUNG has further confused the matter. The reason for us pinpointing DSS schools is that the Government has all along had no intention to apply this system to DSS schools. We have therefore asked the Government this question: As the system is so good, why are DSS schools not benefited and aided secondary schools being forced instead? This is our argument. If the system is good, DSS schools should be benefited too. Why are they not given the same treatment by benefiting them right from the beginning? This is one of our arguments. We

are not forcing the Government to include DSS schools at this stage. It is impossible to do so because there is simply no relevant amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, I have to state my position, that I agree with Mr Tommy CHEUNG that it will not be entirely reasonable to suddenly include DSS schools into the Bill without prior consultation. Therefore, we are not demanding the inclusion of DSS schools.

What Mr Tommy CHEUNG has suggested is that DSS schools have right from the beginning been excluded because they have been operating quite satisfactorily, so why should they undergo further changes? As such, the compulsory requirement that non-DSS schools are given the only option of establishing IMCs or else they will face closure can be taken as a counter-argument to prove that the Government's compulsory requirement of establishing IMCs is not the only option. Given the huge number of schools, will other modes be feasible too? This issue should be explored in this debate.

However, the Government is not willing to explore this issue at the moment. Actually, many non-DSS schools, such as certain century-old schools run by churches, are running perfectly well. Is it really necessary to force these schools to switch to the new mode if they are being operated as good as certain DDS schools? I hope Mr Tommy CHEUNG can refrain from describing such action as "making a volte-face". There is no problem with casting an informed vote after clearly examining the situation. In particular, Mr Tommy CHEUNG has connection with many SSBs, and some of his relatives may be school principals too. He should all the more better understand that many denominational schools have been able to take on board sound advice from parents and teachers and run smoothly without setting up IMCs. Such being the case, why is it necessary to make it compulsory for these schools to implement the system in certain years, or they will face closure?

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, I know we should be discussing the details of the clauses at this stage. However, during such discussion, we should not forget the primary spirit and principles of the

Bill. One of the issues we have been discussing involves a profound change in the existing mode of administration of schools, the setting up of IMCs under SSB, which include parents or alumni as members. This concept is important. What are the reasons for this action? The primary reason is that the Government thinks this may lead to the democratization of school administration. And democratization of school governance enables schools to incorporate divergent views which may make the entire operation of schools become more comprehensive. This, according to the Government, is a very good approach to be adopted in the education system.

Just now, in the Ante-Chamber, an official asked me, "LEUNG Yiu-chung, what is the matter with you? You are a teacher. Why do you not have faith in parents? Why can you not be confident about the participation of parents in school management committees?" In fact, what is the essential spirit of the Bill? To enable parents to participate in the operation of schools. Mr Jasper TSANG has been talking loads about the modes of aided schools and DSS schools. However, no matter what the differences are, they are not the focus of the principle in question. I think you should not go off a tangent to further draw a red herring. This is entirely irrelevant to the principles concerned. What is crucial is the essence of the Bill. The essence of the Bill is to facilitate the participation of parents and alumni in school operation. This is the principle. Irrespective of the mode of operation, be it an aided school or a private school, the essence of the Bill remains unchanged. The Education and Manpower Bureau considers this essence the best, one that is the most democratic and transparent. This is where the problem lies. It is irrelevant to talk about the aided or direct subsidy mode of schools. If it is so good an arrangement, we have to ask why universal implementation is not advocated. If it is so good, why it is only applied to certain schools, aided schools in particular, but not DSS schools? This is my question.

However, the Government gives no answers to these questions. Mr Tommy CHEUNG says, at the outset, it has not been stated in the Bill that the arrangement will be applied to DSS schools, so we should not discuss this. I would like to ask in return then why the Government had not considered applying this arrangement to DSS schools when the Bill was first introduced. I often feel that there is a motive behind the Bill, but I cannot figure out what it is. A lowly speculator, as I often am. I want to know the motive of the Education and

Manpower Bureau, but the Bureau fails to state it clearly. If, as the Secretary says, the Bill aims to improve the operation of schools, then why has the Government not implemented it universally and comprehensively? Why has it not required all the schools in the territory to implement the arrangement? In this connection, it is hardly convincing and comprehensible.

Some Members, articulate superficially, have made remarks which seem to be justifiable. However, I do not think they have touched the crux of the problem, for they have just blurred all kinds of questions, distracting our focus from the crux of the problem. I think the most important question we have to consider is: What is the essence of the Bill? The answer is the participation of parents in school operation. Then, please tell me if it makes a difference whether a school is directly subsidized or not. In what way is this relevant? I do not see why certain schools have such arrangement and others do not, and why certain schools need the arrangement but others not. Why? I really have no idea. If those DSS schools are able to operate successfully without the participation of parents, why can aided schools not also operate successfully without it? The question is that the Government has been ambiguous about the issue right from the start. If the Secretary wants us to take his view, I hope he can explain the case clearly later.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, it will be Ms Cyd HO's turn. I think you do wish to speak again.

MS CYD HO (in Cantonese): Madam Chairman, I am happy to note that within such a short time, just before the Secretary and I speak again, so many Members have given their remarks. The debate is thus suffused with better exchanges and interactivity, far better than Members just rising to read from their scripts.

Madam Chairman, Miss Margaret NG compared the situation to that of the Fall of Troy and the Wooden Horse earlier. I can tell Members that this is not a pony but a full-grown horse. Though the consequence of the Bill may not go so

far as to "seizing others' wives and daughters", the assets of SSBs are being seized or almost robbed. A big wooden horse it is. Initially, the Bill requires that on the commencement date of the Bill, SSBs must hand over all the accounts, books, assets, and so on, to IMCs. No wonder SSBs have been staging strong opposition all along. In the coming round of amendments, we will have the chance to have a look at the assets and long-term loan arrangement of these SSBs. A clearer analysis can be made at the time.

The Bill is extremely terrifying originally. But, certainly, some terrifying clauses have already been amended. Now, IMCs are only empowered to oversee public fund and its utilization. IMCs are not allowed to inquire into assets, including building premises, accumulated by SSBs before. When the Secretary promoted the Bill to us (not exactly to us, but to the public instead), he said that the establishment of IMCs was intended to enlist the participation of different parties, oversee the utilization of public funds in schools and check whether the problem of corruption or nepotism existed. For example, a school that has only employed eight teachers amplifies the number of its teachers to 10, and no one knows who has pocketed the salaries of the two non-existent teachers. Such conduct is certainly improper, criminal indeed, and should be liable to punishment and legal sanctions.

Could those irregularities be handled by invoking the criminal law only when they really occurred? The Secretary gave a negative answer, stating that it would be too late when such incidents occurred, and pre-emptive arrangements for sending someone to station at schools thus have to be made. We have also asked about the number of times similar power has been invoked. The reply of the Permanent Secretary, that is the former Director of the Education Department, stated that there had been six times. Now, just because the incidents have happened in six schools, a broad-brush approach is adopted. All schools are left with no choice but to operate under the mode of IMC. Actually, the key factor is whether the performance of schools is good. No matter a cat is black or white, it is a good cat as long as it can catch mice. However, this approach is not allowed now. Not only the cat is required to be spotted, it is required to conform to certain style and size. Any mistake would lead to the cancellation of registration of managers.

Another selling point of the Bill is that once the Bill is passed, the parties concerned will be exempted from civil liability. Thus, if we do not support the Bill, parents and managers participating in school governance may be deprived of legal protection. If so, we will be the sinners for thousands of centuries. But, Madam Chairman, these are not the facts of the case. Even with the deletion of section 40BR, parents, managers or alumni participating in school governance are still exempted from civil liability, enjoying the same protection. Why should an additional punishment be imposed in seeking to achieve this aim? Does the Education and Manpower Bureau aim at improving school governance or taking over SSBs, inflicting damage on a civil society? Which is its real motive?

Mr CHAN Kam-lam said earlier that Members supporting universal suffrage were actually opposing the democratization of school governance. May I ask whether Mr CHAN Kam-lam had undergone vetting when he was last elected members of the District Council? The answer is in the negative. If one must undergo vetting before he or she is allowed to be a member of the District Council, not only the candidates will oppose it, electors will not agree to it either.

Madam Chairman, in the very beginning of the debate today, we made it crystal clear that the Bill is in no way related to the democratization of school governance, but only a means to discontinue the original mode of operation used by SSBs, which may thus violate Article 141 of the Basic Law. The election proposed in the Bill is "wishy-washy". That is why the Secretary says it is afraid that the election may not work properly and have to assign the Permanent Secretary to oversee it and check whether there is any malpractice. This is not genuine democracy. So, the two issues should never be put together for discussion.

Earlier on, some Members mentioned the abolition of compulsory school attendance order. Madam Chairman, as a parent myself, I have some strong feelings about this. From the children's point of view, the choice between schools and parents is a matter of the lesser of two evils, for both of them will spoil their happy childhood. If their parents are better than schools, children will not be willing to go to school. If schools are better than their parents, they will not be willing to go home. If some parents are capable of educating their own children, are willing to devote their time and efforts, what is so wrong if those children do not attend schools? Nowadays, some teachers at school

regard smashing children's dignity as their daily routine. The self-confidence and self-esteem of students who have to spend long hours at school may be severely injured. Of course, we have good teachers. The good education methods they employed are more stimulating than those of parents. However, we are talking about a matter of choice. If schools are operating successfully, why should they not be allowed to continue to operate? When a boat is sailing smoothly ahead, why should we keep on rocking it until it capsizes? I appeal to all Members never adopt such a broad-brush approach.

Regarding democracy, there is a world of difference with that under the Bill. The Bill imposes restrictions and sets a deadline, requiring the time of mandatory implementation to be decided by the Legislative Council by resolution. I do wish that we could do so. Mr CHEUNG Man-kwong, let the Legislative Council propose the mandatory implementation of universal suffrage in 2008! Of course, we cannot do that. Therefore, they are two different issues. The crux of the problem is choice. That is why DSS schools were mentioned earlier. Though DSS schools and aided schools are both funded by public money, choices are only available to the former not the latter.

I very much agree to the remarks made by Mr Jasper TSANG earlier, which stated that in the case of DSS schools, "money follows students". Therefore, via market force, the operation of DSS schools is monitored by the choice of parents. Schools performing poorly will not be able to get students; DSS schools will not get their subsidies. However, why aided schools cannot be offered the same choice? Why does only DSS schools have the choice? Owing to the decrease in student population, aided schools unable to secure sufficient intake at Primary One will have to cut classes. As a result, some schools take the cases to Court and others have to raise funds for their schools. The approach of giving no choice should be attributable to the rigid strategy of the Education and Manpower Bureau. The Bureau, for the sake of reducing public expenditure, established the DSS. The arrangement aims to reduce the number of aided schools with a view to adjusting the number of school places to a level on par with the number of students, any surplus school places are regarded as wastage. If the ratio between the two is just right, say 100 to 100, how can there be any choice? Parents unable to find a place in aided schools for their children will have to turn to DSS schools. This is a Hobson's choice.

Therefore, this issue of choice is in fact about the choice of the entire education system.

At present, the crux of the problem is that the Education and Manpower Bureau wants to force its way through at all cost to implement a system it considered good. In the name of righteousness, it is virtually imposing dictatorship. If Members do cherish the freedom of choice, please support the amendment to delete section 40BR. Thank you, Madam Chairman.

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, I am not rising to speak, I just wish to ask Ms Cyd HO to clarify a point. For she asked me in her earlier remarks whether I had undergone vetting when I was elected as a member of the District Council and a Member of the Legislative Council. I have no idea what she was talking about. Will she please clarify what kind of vetting she meant? I must meet the required qualification stipulated in the electoral law to be eligible to stand as a candidate. I really do not know what she meant. I hope she will clarify this.

MS CYD HO (in Cantonese): Madam Chairman, I am more than happy to do so, as long as my clarification will not be taken as a repetition of my earlier speech. In fact, we mentioned the appointment of managers earlier in the previous discussion on certain clauses and their amendments. For managers returned by election, as in the case of Mr FUNG Ka-keung, even though he was elected by the alumni association, there are still problems in his appointment, in the Government's view and delays have resulted. So, I said just now that under a truly democratic system, elected members of parliamentary assemblies should not be subject to vetting, as in the case of Mr CHAN Kam-lam. When he was elected a District Council member and a Member of the Legislative Council, he was not subject to vetting and so, there is no problem. It is direct election and is therefore a democratic system. However, the Bill cannot be compared to a democratic system or universal suffrage, because even the elected school managers are subject to vetting. I hope the authorities can clearly explain this point.

MR CHAN KAM-LAM (in Cantonese): Madam Chairman, as I listened, I felt increasingly puzzled. It is because Ms HO said that those who are elected are

subject to vetting. To be honest, for District Council members, let us not talk about vetting after a member is elected, there will be problems if a candidate has a criminal record or committed an offence before he is elected. So, I do not know why she had associated my case with that of FUNG Ka-keung. I do not know what her purpose is in so doing. I really feel puzzled, and I hope she can find out what exactly had happened before dragging other people into the pit, so as not to cause the public to mistakenly think that I am not qualified to be elected.
(Laughter)

Thank you, Madam Chairman.

MS CYD HO (in Cantonese): Madam Chairman, I will try my best to keep my speech last not more than one minute. In democratic elections, we can see an example. Insofar as the electoral system is concerned, even though the candidate has a criminal record, he can still contest the election after a certain period of time. There will be no problem if the electors know about this and are willing to vote for him. However, I cannot possibly explain clearly to Mr CHAN Kam-lam the many unreasonable clauses of the Bill in such a short time. So, I hope he can ask Mr YEUNG Yiu-chung who is sitting beside him, or read the minutes of meetings after the scrutiny of the Bill is completed. I will be very happy to explain to him outside this Chamber the fact that democratic popular election bears no relation to the Bill.

Thank you.

CHAIRMAN (in Cantonese): Before I put to you the question on Ms Cyd HO's amendments, I remind Members again that if Ms Cyd HO's amendments are agreed, the Secretary for Education and Manpower may not move his amendments.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Ms Cyd HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Cyd HO rose to claim a division.

CHAIRMAN (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. Your co-operation is appreciated.

CHAIRMAN (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendments.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendments.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted for the amendments.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the amendments.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the amendments and 19 against them; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 16 were in favour of the amendments and 10 against them. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, you may move your amendments.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Chairman, I move the amendments to proposed section 40BR in clause 17 and to clause 26.

Proposed amendments

Clause 17 (see Annex III)

Clause 26 (see Annex III)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

CLERK (in Cantonese): Clause 26 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move further amendments to clause 17. We propose the deletion of the original heading of the proposed Part IIIB and substituting it with "Management of IMC Schools", to reflect more clearly the scope covered by that

Part. Part IIIB includes proposed sections 40AA to 40CC. I will highlight the salient points of the amendments proposed, and briefly explain the reasons for proposing such amendments. To manifest the role of SSBs and reflect the opinions of some of them, I move the following amendments: the addition of proposed section 40AD(1)(ca), adding that SSBs may be responsible for "deciding the mode of receiving government aid", for example, to choose to become DSS schools; the amendment to the proposed section 40AD(2)(a), stipulating that IMCs must be responsible for "formulating education policies of the school in accordance with the vision and mission set by the sponsoring body"; the amendment to proposed section 40AE(1), stipulating that an IMC must exercise its power "in accordance with the vision and mission and the general educational policies and principles set by the sponsoring body of the school"; the amendment to proposed section 40AE(3), empowering SSBs to issue binding financial guidelines to IMCs; the amendment to proposed section 40AI, stipulating that supervisors of a school may be appointed by the sponsoring body of the school or elected by managers of the school; the amendment to proposed section 40AJ to transfer the functions of chairpersons of IMCs to that of the supervisors of the school; the amendments to sections 40AJA, 40AK and 40AQ, by adding a requirement related to "alternate sponsoring body manger" to enable SSBs to have sufficient representatives at every meeting of IMCs, ensuring the primary interest of SSBs is safeguarded.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

Moreover, we propose a series of consequential amendments to reorganize the order, style and drafting of provisions, which mainly include:

- (a) the amendment to proposed section 40AB, by deleting the definition of "operating school" and adding the definition of "specified school".
- (b) the addition of the newly proposed section 40ABA, stipulating the Secretary may by notice published in the Gazette amend the list of specified schools in Schedule 3, and setting out conditions that schools can be listed as specified schools. In respect of

Schedule 3, clause 33 is amended to add the list of "specified schools" that can decide whether or not to establish IMCs depending on their needs.

- (c) the amendment to proposed section 40AE. First, in subsection (2), it is defined clearly that an IMC may only deal with funds and assets received from the Government in the capacity of a trustee. Second, by adding subsections (4) and (5), it is stipulated that an IMC, in deciding the terms and conditions of service of any teacher of approved establishment, must be subject to the relevant code of aid. Actually, even without this amendment, it is required in section 40AE(3) that an IMC is to exercise its power subject to the code of aid. In other words, IMCs must pay salary in accordance with the pay scale. However, some members of the education sector hope that the arrangement can be stipulated expressly to alleviate their worries. We thus propose this amendment to show our sincerity. The safeguard on the terms and conditions of service, which has already been provided for under the original provision, will not be fostered farther by the amended provision.
- (d) the amendment to proposed section 40AF(1) sets out "no property belonging to and provided by the Government, the sponsoring body or any other person for the operation of a school shall, by reason only of the establishment of the incorporated management committee of the school, become property of the committee". By doing so, it will not only protect the property of the Government and SSBs, but also property donated by other persons to the school.
- (e) the deletion of proposed section 40AH; and the transfer of all general requirements of composition of IMC and amendments aim primarily at stipulating no manger shall serve in an IMC in more than one capacity to the newly added proposed section 40AJA. Regarding the proposed subheading before the proposed section 40AH, the original subheading "composition of incorporated management committee" will be substituted by "supervisor".

- (f) the amendment to proposed section 40AL improves the nomination method for teacher manager, stipulating the nomination of teacher managers by the principal and the election method of teacher managers.
- (g) the amendment to proposed section 40AM stipulates that in an election conducted by a parent-teacher association, all parents of current pupils of the school have equal voting right and right of candidature to ensure that the election is fair and impartial.
- (h) the amendment to proposed section 40AN stipulates that alumni associations shall be recognized only if the membership is open to all alumni of the school. This may prevent IMCs from only recognizing alumni associations representing graduates of certain years, which may reduce the degree of representation of alumni managers. We also propose to amend to the effect that the IMC of a school or a sponsoring body of a school may recognize an alumni association, as may be provided for in the constitution of the committee.
- (i) the amendment to proposed section 40AO includes under the list of persons that shall not be nominees with ties of kinship with members of the governing body of sponsoring bodies, and to relax the restriction on the qualification of independent manager to broaden the source of candidates eligible for independent manager.
- (j) the amendment to proposed section 40AP stipulates that when an operating school establishes an IMC under proposed section 40BM, the first parent manager of the school should be nominated for registration within three months from the establishment of the committee.
- (k) the amendment to proposed section 40AQ includes a provision requiring an alternate parent manager and a parent manager to be elected in the same manner for nomination for registration as manger.

- (l) the amendment to proposed section 40AS extends the time limit for filling a vacancy in the IMC from one month to three months, allowing sufficient time for the IMC to identify a candidate to fill the manager vacancy.
- (m) the deletion of proposed section 40AT which states that upon the expiration of the term of office of a manager, the IMC of a school shall give a written notice to the Permanent Secretary. In view of a similar provision under the existing section 39, we propose to delete this provision.
- (n) the addition of the newly proposed section 40ATA stipulates that when a parent manager or independent manager ceases to be qualified to hold office as such in a school year, his term of office as a manager shall continue until its expiry or the end of the school year. This ensures that managers losing their parent or independent status cannot remain in the IMC in the long run.
- (o) the amendment to proposed section 40AV stipulates that if the teachers of a school pass a resolution that any teacher manager is not suitable to continue to hold office, the principal of the school shall make a written request to the IMC for the cancellation of the registration of that teacher manager. Since a teacher manager is not nominated by any organizations, the provision ensures that someone will be responsible for the administration work related to the nomination and request for cancellation of registration of teacher manager.
- (p) some Members point out that as the draft constitution of IMC already requires the approval of the Permanent Secretary, the constitution amended subsequently should not require further approval from the Permanent Secretary. In view of this, we propose to amend proposed section 40AW, stipulating that an IMC may by resolution amend its constitution in the manner provided for in the constitution and the amended constitution shall be lodged with the Permanent Secretary. If the Permanent Secretary objects to the relevant amendments, he or she shall by notice inform the IMC

within a month to specify the reason for the objection. Otherwise, amendments to the constitution will take effect automatically one month after it is lodged. The arrangement provides greater autonomy and flexibility to SSBs in handling the amendment of their constitutions.

- (q) the amendment to proposed section 40AX stipulates that an IMC shall not delegate its power of recognizing the employment and dismissal of teachers to individual managers.
- (r) the amendment to proposed section 40AY stipulates the Permanent Secretary shall, by written notice to an IMC, nominate a representative to attend meetings of the IMC. Regarding the suggestion of some Members on seeking the prior consent of an IMC in respect of the nomination by the Permanent Secretary, we consider that difficulties may be encountered in cases where views of managers are relatively divergent.
- (s) to protect the interest of donors making donations to school, we propose to amend the proposed section 40BC, stipulating that unless the donor indicates at the time of donation that he does not wish to reclaim the property in the event of the dissolution of the IMC, the Permanent Secretary shall return any donated property left unsettled at the time the committee is dissolved to donors who intend to reclaim their property.
- (t) the amendment to proposed section 40BF stipulates that the public be permitted to inspect the register of interest disclosed in respect of issues to be considered at meetings, so as to enhance the transparency of IMCs.
- (u) to further protect managers from civil liability, we propose the amendment to proposed section 40BG(2A), stipulating that no civil proceedings shall be brought against a manager unless he has not

acted in good faith. This will thus reduce the chances of exposing manager to civil proceedings.

- (v) the amendment to proposed section 40BH stipulates that a DSS school that has commenced operation or is going to operate or a specified school shall notify the Permanent Secretary in writing of its intention to establish an IMC.
- (w) as we propose to set out the 13 non-aided schools in receipt of government subsidies in the schedule, and propose to grant them equal footing as DSS schools to decide whether or not IMCs have to be established, a mechanism for screening these schools is not required, so we propose the deletion of proposed sections 40BI and 40BT.
- (x) the amendment proposed to sections 40BK and 40BL stipulates that the list of proposed managers be submitted to the Permanent Secretary upon the approval of the constitution of IMC.
- (y) the amendment proposed to the proposed section 40BM(4) stipulates that no compensation is payable by the Government to any person who ceases to be a supervisor or manager owing to the establishment of an IMC. But the provision does not prevent the persons concerned from claiming compensation from other parties.
- (z) as an IMC has to formulate its constitution before stating the composition requirement of the IMC, and prepare the list of proposed managers according to the composition requirement, we thus propose to amend proposed sections 40BU and 40BW. The amendment reflects the above procedure by substituting the original provision on requiring a SSB to submit the draft constitution and list of proposed managers of IMC at the same time.
- (za) as aided schools are allowed to convert to DSS schools depending on their own needs under the relevant policy, we thus propose the

addition of a newly proposed section 40CB, stipulating aided schools with IMCs may become a DSS school without IMC.

- (zb) we understand the worries of Members about the power of the Permanent Secretary, and thus propose the deletion of proposed section 40CC which empowers the Permanent Secretary to give directions to IMCs on certain matters.

I hope Members will support and pass these amendments. Thank you, Madam Deputy.

Proposed amendment

Clause 17 (see Annex III)

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, the Democratic Party supports this series of amendments. Just now the Secretary took great pains to read them out, and not even all the alphabets from A to Z are enough for them. From this we know that a considerable number of provisions are involved in this series of amendments. Of these amendments, we have to particularly mention the provision about parents joining the SMCs, and we are going to vote for it. In fact, this has been the position of the Democratic Party, and even in our discussions with many SSBs, this is where the greatest divergence between us lies. But we are not prepared to compromise on this point.

Besides, these provisions involve many requirements on the disclosure and declaration of information. In this regard, I hope that after the legislation has come into effect, the Government will make sure that the school managers, including parent, teacher and alumni managers, are aware of these requirements. As we have seen that the Secretary was left almost breathless after reading out all the provisions, we know that when these provisions are actually put into practice, the schools in general may not understand them or they may not be able to cope

with them and act in accordance with the law. Not that the schools intend to breach the law, just that there are actually too many legal provisions and the provisions are too complicated. Under such circumstances, it would be most unfortunate if school managers commit an offence inadvertently only because they do not know the provisions clearly, including the requirements on the disclosure of information or declaration of interest by managers at meetings or the publication of such declarations for public inspection.

Certainly, these provisions also involve the requirement that IMCs should comply with the payment stipulations in the Code of Aid in deciding teachers' remuneration. Violation of this provision or even the introduction of block grant would, in our view, defeat the spirit of this legislation introduced by the Government. However, as Honourable colleagues or Members can see, the Bill contains a large number of provisions which are very complicated. I am gravely worried about whether the schools can truly take care of every detail in accordance with the law when applying these provisions to their schools. I am also worried about whether the Education and Manpower Bureau has sufficient manpower to assist schools in the enforcement of the Bill. I am all the more worried that even though the schools are told what they should do, they may still court troubles due to the complications involved in the course of enforcement.

(THE CHAIRMAN resumed the Chair)

Certainly, this will unceasingly add to the workload of the Education and Manpower Bureau, particularly that of the staff at regional offices, and will mean plenty of additional work for schools too. I urge the Bureau, when implementing this legislation, to ensure the provision of sufficient resources and funding to support its regional offices and also to teachers and principals at schools responsible for enforcing the Bill.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak?

(The Secretary for Education and Manpower shook his head to indicate that he did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 17 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 47.

CHAIRMAN (in Cantonese): Both Ms Cyd HO and the Secretary for Education and Manpower have respectively given notice to move amendments to clause 47.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. In accordance with the Rules of Procedure, I will first call upon Ms Cyd HO to move her amendment.

MS CYD HO (in Cantonese): Madam Chairman, I move the amendment to clause 47.

Madam Chairman, under regulation 92(8) of the Education Regulations, the Permanent Secretary may give a direction in writing to the supervisor and to the principal of a school that from a specified date, a syllabus of instruction or any other document shall not be used for instruction in any class in the school. The principal of the school shall be liable to criminal prosecution for breach of the direction of the Permanent Secretary in the school, and shall be liable on conviction to a fine at level 5 and to imprisonment for one year, as provided in regulation 102 of the Education Regulations.

We all agree that DSS schools have given us the freedom to choose and so, we should allow these schools greater flexibility, in order that they can enjoy a certain extent of freedom with regard to what should be taught in classes, thereby injecting greater diversification into their teaching and enabling them to tailor teaching to students' aptitude in accordance with the respective conditions of the school. This is the way to give play to democratized school administration, and executive intervention is unwarranted. In fact, allowing schools to have more freedom is like a civil society *vis-a-vis* the Government: The tighter the government control, the less likely the public wishes to make a move or dares to make a move. As a result, the energy and creativity in the civil society will be hidden without being brought into play. A vicious cycle will hence develop in that the Government will become bigger and bigger, whereas the civil society will be ever shrinking. The future of society as a whole will become gloomy. Therefore, insofar as the teaching syllabus is concerned, we must provide ample room for schools to play their roles freely and vividly. If the Permanent

Secretary is given this power and is not subject to any checks and balances, and if a teaching syllabus will be banned with a direction given by the Permanent Secretary only, then such a restriction is undesirable and may impede the dissemination of information in schools and restrict the basic freedoms of students in their access to information.

Certainly, it is often said that freedom is not totally unrestricted and freedom may not necessarily be absolute. For obscene or indecent materials, it is certainly not our wish to let students have access to them. For games featuring excessive violence, it is not our wish to see students gathering around to play these games. So, we do consider it necessary to impose restrictions, but we must prove that these restrictions are necessary in a democratic society and the damage to be done to basic freedoms is minimal and proportional; and we cannot use a sledge hammer to crack nuts. But according to the existing provisions, the powers of the Permanent Secretary are unrestricted and his exercise of such powers is not subject to any monitoring. As a result, schools will impose restrictions on themselves and conduct self-censorship in teaching, which may not be conducive to the diversified development of education.

As we have seen before, many restrictions are set when the 4 June incident is mentioned in textbooks. I am worried that five years later, the same attitude will be adopted for the march on 1 July 2003, not daring to touch on the subject. But Madam Chairman, I agree that basic regulation is necessary, and it is best to make reference to the existing general restrictions which are acceptable to us all. In this connection, I have read the Generic Code of Practice on Television Programme Standards issued by the Broadcasting Authority in 2003. Some principles are mentioned in this document: "any material which is indecent, obscene, or of bad taste which is not ordinarily acceptable to the viewers; any material which is likely to encourage hatred against or fear of, or considered to be denigrating or insulting to any person or group on the basis of ethnicity, nationality, race, gender, and so on; and anything which is in contravention of the law". Madam Chairman, these three principles are in fact very good. We cannot accept obscenity and indecency; we must not allow these materials to be shown before the eyes of students, and it is not our wish to stir up ethnic hatred. Certainly, no breach of law is allowed. In fact, on the point about no breach of law, I have had a struggle for a long time. Madam Chairman, now we have increasingly more undesirable legislation. Adding to all these this provision, and just look at the requirement of "not in contravention of the law" alone, we will find that the latitude has become increasingly narrow. Nevertheless, since

the Legislative Council is responsible for enacting legislation and if the macro environment is a tendency towards tightened control, then the micro environment will have to comply without exception. So, finally, albeit reluctantly, I have put "anything which is in contravention of the law" in it to provide some objective yardsticks for the Permanent Secretary in exercising this power.

In fact, Madam Chairman, incorporating these generally accepted standards will be useful to the Permanent Secretary in exercising his power, because the transparency of decision making will be seen to have been enhanced; we know that there will be objective yardsticks and there will be consistency, rather than subjecting the decision to the wish of one person. Moreover, this can preclude public allegation of political vetting by the Permanent Secretary and provide more objective standards for schools to follow. So, there will be rules for compliance by schools and they no longer have to write to the Permanent Secretary when in doubt asking whether they can mention the 4 June incident or the march on 1 July. Furthermore, when the Permanent Secretary exercises this power, the affected schools can base on clear objective standards to lodge appeals. With a clear understanding of the situation, the affected schools will know whether or not they should take actions to overturn the decision of the Permanent Secretary.

The last merit is that proportional restrictions will be imposed on the access to information, and these restrictions will make the relevant policy and the exercise of power by the Permanent Secretary more reasonable.

Madam Chairman, I urge Members to support my amendment in order to defend students' freedom to access information, so that students can be exposed to different sets of values in the course of learning and hence build up their own set of values in life.

Thank you, Madam Chairman.

Proposed amendment

Clause 47 (see Annex III)

CHAIRMAN (in Cantonese): I now call upon the Secretary for Education and Manpower to speak on the amendment moved by Ms Cyd HO as well as his own proposed amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, when exercising statutory powers, the Permanent Secretary will adopt a stringent and responsible attitude, taking into consideration all relevant factors. Regulation 92 of the Education Regulations is no exception. Ms Cyd HO now proposes that the Permanent Secretary shall have regard to three factors, and this is, in fact, unnecessary. It is because Ms Cyd HO does not intend to restrict the powers of the Permanent Secretary. She only proposes to require the Permanent Secretary to consider those three factors when exercising the powers. This is, in fact, administrative in nature. Here, I can give an undertaking that the Permanent Secretary will take into consideration the factors proposed by Ms Cyd HO.

Specifying in law the consideration of something of an administrative nature is, firstly, unnecessary; secondly, a time-consuming process will be involved when adjustments are necessary to the factors for consideration, for this can be done only by way of legislation; and thirdly, setting out a number of factors may give rise to unnecessary disputes, for there may be queries about whether factors not specified in law are irrelevant factors for consideration and the decision of the Permanent Secretary may hence be challenged on this basis. For these reasons, the Government will not support this amendment. I will propose an amendment to the effect that the reference to "Director" in the heading of regulation 92 of the Education Regulations be replaced by "Permanent Secretary". I reiterate that the Government opposes the amendment moved by Ms Cyd HO and urge Members to vote against Ms Cyd HO's amendment. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by Ms Cyd HO as well as the Secretary for Education and Manpower's proposed amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS EMILY LAU (in Cantonese): Madam Chairman, I speak in support of Ms Cyd HO's amendment. As Ms Cyd HO said earlier in moving the amendment,

this provision will indeed lead to self-censorship. From reports that I have read recently, there is such a case not only in relation to the 4 June incident or books.

As tension is mounting in the atmosphere, many people feel inhibited from discussing the more controversial issues. There is even the impression that schools are some very sensitive places. So, if Ms Cyd HO's amendment is passed and the factors are set out, then people can know clearly what should not be included. As for the other information, the message is very clear and that is, information should be disseminated as freely as possible. I believe we must make publishers or authors feel confident that they will not go beyond the line or do something which gets on the nerves of the authorities. This is a very important message. If we wish to uphold academic freedom and if we wish that our students in schools can be exposed to different views and issues, then I believe this amendment is necessary. Madam Chairman, this is a very old provision which has its unique historical background.

The Secretary said just now that the amendment, if passed, would restrict the powers of the Permanent Secretary. It is exactly our intention to restrict his powers. We do not wish to see excessive powers being given to him or even abuse of such powers. The factors under our discussion now are said to be administrative in nature, but they may not necessarily be so. I believe these can be clearly written in law. With the consent of the authorities and the support of the Legislative Council, these can be clearly spelt out in law to convey a very positive message. This provision might be incorporated into the law for political reasons in the past, but now, we want to tell the community that in respect of books and so on, it is our wish to allow a greater room for creativity. So, I support the amendment of Ms Cyd HO, and I hope colleagues will support it.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Chairman, the Democratic Party supports the amendment of Ms Cyd HO. The purpose of this amendment is indeed to restrict the powers of the Permanent Secretary and in particular, to prevent the Permanent Secretary from exercising this power to restrict the freedom of students to access information in school. This freedom is a very, very important component of human rights. We also support the inclusion of the three factors for consideration as proposed in Ms Cyd HO's amendment, factors that the Permanent Secretary is required to take into consideration in giving a direction. They include any material which is indecent, obscene or of bad taste, and material which is likely to encourage

hatred against or fear of, or considered to be denigrating or insulting to any person or group on the basis of ethnicity, nationality, race, gender and sexual preference. Such information or contents certainly have to be brought under regulation. In other words, apart from these restrictions, we do not think that there are many other areas in which regulation is warranted, and we do not wish to see that this provision will lead to political vetting and hence violation of the Bill of Rights.

So, Madam Chairman, it is our wish to restrict the powers of the Permanent Secretary. We support Ms Cyd HO's amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak again?

(The Secretary for Education and Manpower indicated that he did not wish to speak)

CHAIRMAN (in Cantonese): Ms Cyd HO, do you wish to speak again?

MS CYD HO (in Cantonese): In fact, as I said earlier, this amendment is very conservative, for it is only copied from an existing legislation which is acceptable to us all. The only difference is that the existing legislation serves to regulate the mass media, not the Government. The Government can adopt these standards to impose control on others, but it cannot agree to subjecting the Permanent Secretary to the same kind of regulatory control. The Secretary opined earlier that the amendment was unnecessary because writing the things down as proposed in the amendment would cause unnecessary disputes. Does it mean that no dispute can arise if the provisions are vaguely written, and this is exactly what the Government wishes to achieve? Any legislation which precludes the aggrieved from lodging appeals is not a good piece of legislation. The way the provision is written now confers boundless powers on the

Government and stifles the powers of the people. This is absolutely an obstacle to the development of creativity in students, which is contrary to the fundamental principles of education. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Cyd HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

Ms Cyd HO rose to claim a division.

CHAIRMAN (in Cantonese): Ms Cyd HO has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the amendment.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr

WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 25 were present, 15 were in favour of the amendment and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, you may move your amendment.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendment to clause 47.

*Proposed amendment***Clause 47 (see Annex III)**

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CLERK (in Cantonese): Clause 47 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 13A

Grounds for cancellation of registration of manager.

MS EMILY LAU (in Cantonese): Madam Chairman, I move that new clause 13A be read the Second time.

Madam Chairman, this amendment is more or less the same as the several amendments proposed by me earlier on. It also deals with the circumstances not to the satisfaction of the Permanent Secretary. This involves section 31 about the grounds for cancellation of registration of manager. In fact, this provision has given the Permanent Secretary many other powers. But I propose to delete the part under paragraph c(ii) which provides that the Permanent Secretary may cancel the registration of a manager of a school if it appears to the Permanent Secretary that the person (that is, the manager) cannot perform satisfactorily or is not performing satisfactorily the duties of a manager.

Moreover, paragraphs e(i) and e(ii) provide that "if it appears to the Permanent Secretary that any school of which the person is registered as a manager is not being managed satisfactorily, and in any school of which the person is registered as a manager, the education of the pupils is not being promoted in a proper manner". As I said earlier, I think these provisions are far too general. How should a manager perform in order to be considered satisfactory? Is it that as Mr LEUNG Yiu-chung has said, the manager has to satisfy not only the Permanent Secretary, but also other people? What exactly does it mean? There is no objective standard at present. My amendment uses the same wording as that proposed by me in the several other amendments earlier. That is, I propose to delete the words "is not being managed satisfactorily" and replace them by "any school.....has a serious problem with or is in a crisis of its management, which leads to chaos in school administration or makes the school unable to operate properly". I propose to replace "is not being managed satisfactorily" by those words.

However, Madam Chairman, I think the result will not be in any way satisfactory to me, because I have already lost thrice during the last 12 hours of debate. Having said that, however, we will continue to fight on and I hope colleagues will support me.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 13A be read the Second time.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, Ms Emily LAU has already moved similar amendments earlier. As I said then, the meaning of the amendment proposed by Ms Emily LAU is too narrow and under her amendment, the authorities cannot take measures to prevent the occurrence of problems and intervention is possible only when the problem has deteriorated to an extremely serious state. Retaining such words as "is not being managed satisfactorily" and "the education of the pupils is not being promoted in a proper manner" will enable the Government to promptly rectify irregularities and hence protect the interest of students. This power has not been abused by the Permanent Secretary before, and even if the Permanent Secretary exercises this power, he must comply with the principle of natural justice and his decision will be subject to the checks and balances of the judicial system. Taking away this power rashly is in fact tantamount to undermining the protection of the interest of students. For this reason, the Government opposes Ms Emily LAU's amendment.

CHAIRMAN (in Cantonese): Ms Emily LAU, do you wish to speak again?

MS EMILY LAU (in Cantonese): I do not think my amendment will undermine the protection of the interest of students. It is precisely because of these powers that the students' interest can be protected. The Secretary said that the power has not been abused before. It does not mean that the power will not be abused in the future. If there are provisions which are inappropriate and outdated or if they provide for excessive powers, then we think that deletion or amendment should be necessary. So, I hope colleagues will support me.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 13A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, 13 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CLERK (in Cantonese): New clause 28A	Power of Permanent Secretary to direct remedial measures.
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MS EMILY LAU (in Cantonese): Madam Chairman, this is my last amendment, which also deals with the provision of "not being managed satisfactorily". As read out by the Clerk just now, this amendment concerns the power of the Permanent Secretary to direct remedial measures. That is, if he sees problems, he will give a direction to the school. But under what circumstances can he give a direction? Under section 82(1), he may do so if it appears to him that a school is not being managed satisfactorily, or the education of the pupils of a school is not being promoted in a proper manner. Like the several amendments moved by me earlier, Madam Chairman, I propose to delete the original provision and

replace it by "there is a serious problem with or crisis in school management, which leads to chaos in school administration and makes the school unable to operate properly". The reason is the same as that explained by me earlier and that is, to provide some objective yardsticks and a higher threshold before the Permanent Secretary can be allowed to exercise his power. I hope colleagues will support my amendment.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 28A be read the Second time.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Education and Manpower, do you wish to speak?

(The Secretary for Education and Manpower shook his head to indicate that he did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 28A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Dr TANG Siu-tong, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr Ambrose LAU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through

direct elections and by the Election Committee, 23 were present, 13 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CLERK (in Cantonese):	New clause 17A	Heading substituted
	New clause 26A	Permission to operate school or to act etc. pending appeal
	New clause 34A	Approval for roof playgrounds
	New clause 34B	Structural requirements
	New clause 34C	Pupils using roof playgrounds to be under supervision
	New clause 34D	Numbers of pupils allowed on a roof playground or balcony
	New clause 34E	Limitation of activities on roof playgrounds
	New clause 36A	Refreshment places
	New clause 36B	Sanitary condition
	New clause 37A	Formal receipts
	New clause 46A	Regulation substituted
	New clause 46B	Size of classes
	New clause 46C	Hours of instruction

New clause 47A	Regulation substituted
New clause 47B	Non-resident pupils
New clause 48A	Expelled pupil not to enter school premises without permission
New clause 49A	Regulation added
New heading before new clause 58	Societies Ordinance
New clause 58	Persons to which the Ordinance does not apply.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):
Madam Chairman, I move that the new heading and new clauses read out just now, be read the Second time. They include:

- (a) New clause 17A proposes to repeal the subheading "Appointed managers" before section 41 and substituting "Permanent Secretary may appoint managers" to better reflect the content of the provision.
- (b) New clause 26A proposes to amend section 66(1) by adding paragraph (ba) to clearly explain that should an incorporated management committee (IMC) lodge an appeal to the Appeal Board over the decision of the Permanent Secretary to raise objection to its amendment to the constitution, the Permanent Secretary may give permission for the proposed amendment to the constitution to continue to take effect during the appeal period.
- (c) Owing to the concern that it is operationally difficult to limit the number of people using the verandah, new clauses 34A, 34B, 34C, 34D and 34E propose to repeal the existing reference to "verandah". We find the proposal to delete "balcony" unacceptable because the regulation has provided for the safety design of the roof. In comparison, the possibility of accidents occurring in the balcony is

greater, whereas the lives and safety of pupils are of the utmost importance. Therefore, although the retention of the restriction on "balcony" will result in an administrative burden, we believe schools will not object.

- (d) New clause 36A proposes to amend regulation 47 to repeal the reference to "shop" and substituting "tuckshop" which is more specific.
- (e) Clause 36B proposes to delete regulation 48(2) regarding the requirement to colour-wash the relevant school premises.
- (f) Owing to the concern that the seeking of approval from the Permanent Secretary before locking is inappropriate, new clause 46A proposes to amend regulation 85 to provide that any exit door of the premises of any school must be capable of being opened from inside to meet the requirement of the actual situation.
- (g) New clause 46B proposes to amend regulation 88(c) to make the requirement on the size of classes not applicable to IMC schools to accord with the actual situation in these schools.
- (h) New clause 46C proposes to amend regulation 89 concerning the hours of instruction.
- (i) New clause 47A proposes to amend regulation 93 to provide that no school shall provide any course of training the completion of which qualifies the participant for being registered as a registered teacher.
- (j) New clause 47B proposes to delete regulation 95 concerning the requirement that non-resident pupils shall not remain in the school premises during specified periods.
- (k) Owing to the concern that regulation 97 may affect the rights of suspended pupils to return to their schools to meet their teachers or classmates, new clause 48A proposes to amend regulation 97 to provide that the management authority of the school, instead of the Permanent Secretary, may permit the pupils to enter or remain in the school premises during the suspension period.

- (l) In order to regulate the use of profits arising from business or trading arrangement by an IMC school, we propose to add new clause 49A to require that all such profits shall be used for purposes directly benefiting the pupils of the school.
- (m) We have also proposed in new clause 58 to add IMC to the Schedule to the Societies Ordinance (Cap. 151) to put it beyond doubt that the Ordinance is not applicable to IMC.

I hope Members can support and endorse these amendments.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be read the Second time.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clauses 17A, 26A, 34A, 34B, 34C, 34D, 34E, 36A, 36B, 37A, 46A, 46B, 46C, 47A, 47B, 48A and 49A, new heading before new clause 58 and new clause 58.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that the new heading and new clauses read out just now be added to the Bill.

Proposed additions

New clause 17A (see Annex III)

New clause 26A (see Annex III)

New clause 34A (see Annex III)

New clause 34B (see Annex III)

New clause 34C (see Annex III)

New clause 34D (see Annex III)

New clause 34E (see Annex III)

New clause 36A (see Annex III)

New clause 36B (see Annex III)

New clause 37A (see Annex III)

New clause 46A (see Annex III)

New clause 46B (see Annex III)

New clause 46C (see Annex III)

New clause 47A (see Annex III)

New clause 47B (see Annex III)

New clause 48A (see Annex III)

New clause 49A (see Annex III)

New heading before new clause 58 (see Annex III)

New clause 58 (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new heading and new clauses read out just now be added to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedule 2.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedules 1 and 3.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 3. The proposed amendments to Schedules 1 and 3 are consequential to the deletions or changes in the order of provisions. I hope Members will support and pass these amendments.

Proposed amendments

Schedule 1 (see Annex III)

Schedule 3 (see Annex III)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Education and Manpower be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendments passed.

CLERK (in Cantonese): Schedules 1 and 3 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Long title.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move an amendment to the long title to update the title of "Director of Education" as "Permanent Secretary for Education and Manpower". I hope Members will support and pass this amendment.

Proposed amendment

Long Title (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Education and Manpower, be passed.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

EDUCATION (AMENDMENT) BILL 2002

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):
Madam President, the

Education (Amendment) Bill 2002

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Education (Amendment) Bill 2002 be read the Third time and do pass.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LEUNG Yiu-chung rose to claim a division

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Ms Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 51 Members present, 29 were in favour of the motion and 21 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Education (Amendment) Bill 2002.

PRESIDENT (in Cantonese): Members, you may be interested in knowing that we have spent more than 13 hours on the scrutiny of this Education (Amendment) Bill 2002.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adoption (Amendment) Bill 2003.

ADOPTION (AMENDMENT) BILL 2003

Resumption of debate on Second Reading which was moved on 18 June 2003

PRESIDENT (in Cantonese): Miss Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MISS MARGARET NG: Madam President, as Chairman of the Bills Committee on Adoption (Amendment) Bill 2003 (the Bills Committee), I wish to report on the main deliberations of the Bills Committee.

The Adoption (Amendment) Bill 2003 (the Bill) proposes changes and improvements to existing arrangements on local adoption. The Bill also adds

provisions for intercountry adoption for the purpose of giving effect to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption in Hong Kong.

According to the Administration, in arranging an adoption, the best interests of the child will be the guiding principle. Priority will be given to placing children to local families of the same ethnic or cultural background. Arrangements for intercountry adoption will be made only when the possibility of matching a local adoptive home for the child has been exhausted. Although prospective adoptive parents are not required to come to Hong Kong to escort the children back to their homeland, they are encouraged to do so. If a prospective adoptive parent cannot come to Hong Kong, escort services will be provided.

One of the major concerns of the Bills Committee is the proposed prohibition of privately arranged adoption by unrelated persons. Under the Bill, any unauthorized person who makes private arrangements or placement for adoption by unrelated persons shall be guilty of an offence and is liable to a fine at level 6, currently at \$100,000, and to imprisonment for six months.

The Bills Committee has queried whether there have been serious shortcomings in the existing private arrangements for local adoption by unrelated persons. Given the wide meaning of "making arrangement", for instance, one who facilitates an adoption would be covered, and the severity of the penalty, the Bills Committee is particularly concerned that innocent people acting in good faith, out of goodwill, or without ill intention, would be caught.

The Administration has explained that while in many cases the adoptions are smooth, there have also been problematic cases. Since the Social Welfare Department (SWD) may not be involved in making the adoption arrangements, such arrangements may give rise to various problems, such as the lack of proper counselling and assessment. Accordingly, there is a risk that a child will not be placed with the suitable prospective adopter, nor in the best available adoptive home. To ensure that the vital placement decisions are handled by qualified and experienced people who are not acting for personal profit, it is necessary to prohibit arrangement or placement made by unauthorized individuals for adoption by unrelated persons. Effective sanction should be imposed to deter such adoptions.

Having regard to the concern that the construction of the provision would be so wide as to cover innocent individuals, the Administration will introduce amendments to narrow down the scope of making arrangements.

The Bills Committee has pointed out that the proposed prohibition against privately arranged adoption by unrelated persons, if implemented, would have the effect of channelling all birth parents, prospective adoptive parents and adoptive children to the SWD for adoption arrangements. The Bills Committee has asked the Administration to consider allowing non-governmental organizations (NGOs) to make such local adoption arrangements so as to give more choices to birth parents and prospective adoptive parents.

After considering the views of the Bills Committee, the Administration has agreed to propose amendments to allow NGOs to participate in local adoption arrangements by unrelated persons as accredited bodies. The principles of accreditation will be spelt out in the Bill. There will also be safeguards for an accredited body or prospective accredited body to appeal to the Administrative Appeals Board against the decisions of the Director of Social Welfare to approve a new or renewal application for accreditation, and to suspend or revoke an accreditation.

The Bills Committee has raised concern about the proposed arrangements for the matching and placement of adoptive children, where general consent for adoption is given, as the matching decision is still vested with the Director of Social Welfare even when the application for adoption is made to an accredited body.

The Administration explains that the children available for adoption would be placed in a central pool for matching to identify the most suitable adoptive parents. There may be more than one prospective adopter, and all accredited bodies which have proposed prospective adopters for a particular child would become involved in the matching process. The Director of Social Welfare would take a decision having due regard to the opinions provided by the accredited bodies. Where there are more than one prospective adopter, routing the matching decision through the Director would provide an additional degree of quality assurance to the process. A central pool for prospective adoptive parents will also be maintained so as to match the children available for adoption to the most suitable home in the shortest time.

The Administration has also proposed to introduce amendments to the effect that if an arrangement leads to the placement of a child from a place outside Hong Kong but within the People's Republic of China with a person resident in Hong Kong, then the provision on prohibition of privately arranged adoptions by unrelated persons would not apply to the arrangement nor the placement, and any agreement for adoption where the adoption is effected or is intended to be effected in a place outside Hong Kong but within the People's Republic of China would not be covered. According to the Administration, the amendments are necessary to avoid catching certain intracountry adoption activities which, though rare, may take place in Hong Kong.

Although the Administration has advised that adoption orders issued by the relevant mainland authorities are recognized in Hong Kong, the Bills Committee is concerned that the proposed amendments, if adopted, may pose an impression that the adoption arrangements between Hong Kong and the Mainland are given special treatment and not being regulated. The Bills Committee considers that formal arrangements on adoption between Hong Kong and the Mainland should be put in place.

The Administration has agreed to study the need for establishing formal arrangements on adoption with the Mainland and consult the relevant Panel in due course. The Secretary for Health, Welfare and Food has undertaken to state this point when he speaks later today.

Madam President, another concern of the Bills Committee is the proposed repeal of section 5(3) of the Adoption Ordinance which provides that an adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances for making the order. The Bills Committee is concerned that if the provision is repealed, the protection to female children may be compromised. Since there has not been any complaint received against the provision, to guard against potential risk of young female children from sexual abuse by sole male applicants, the Bills Committee is of the view that section 5(3) should be retained. The Administration has agreed to move an amendment to retain the section.

Regarding the provisions in the Bill to enable a step-parent to apply as a sole applicant if his/her spouse is the birth parent of the child, the Administration has, in response to the Bills Committee's concern, proposed an amendment to the effect that only an illegitimate father without any parental rights will be required

to apply as a joint applicant with the step-parent for the adoption of his own child.

The Bills Committee supports the resumption of the Second Reading debate on the Bill today, and the Committee stage amendments to be moved by the Secretary for Health, Welfare and Food.

Thank you, Madam President.

MISS MARGARET NG (in Cantonese): Madam President, now I would like to add a few points in my personal capacity.

Adoption has to do with the most intimate relationship between parents and children in a family, and between the adoptive parents and children, their relationship even carries some measure of sensitivity than a relationship by birth. So, any legislation that deals with adoption must respect the freedom and privacy of individuals. Intervention from government departments must be avoided, not even intervention made in good faith or that thought to be able to produce the best result.

An important objective of the Bill is to prohibit adoption by unrelated persons. Under the existing legislation, any person who wishes to adopt a child can make an application to the Court, irrespective of whether the adopter is related to the child. Before making a decision, the Court will consider the report of the Director of Social Welfare. But under the original proposals of the Bill, after the enactment of the Bill, application to the SWD is required for adoption by unrelated persons. Arrangement for such adoption made privately without involving the SWD and by directly applying to the Court is not only unlawful, but will also be an offence which is liable to prosecution.

Madam President, we must have sufficient justifications whenever we seek to abolish an existing right or freedom and make it an offence. The Administration has explained that it is because some people may not be suitable to become adoptive parents, that they may not understand the commitment of adoptive parents, and that some children may not be suitable for adoption by these people. So, intervention by professional bodies is necessary for the purpose of objective assessment before a decision can be taken as to whether the adoption is suitable, and only in this way is the adoption in the best interest of the

child. I share this view, but I do not agree that the SWD should be the only professional body, and I also oppose in principle government intervention in all adoption activities by unrelated persons.

The Government has proposed to prohibit privately arranged adoption. Since it has made reference to the Adoption Act 1976 of the United Kingdom, it can make reference to the practices in the same Act and allow adoption through non-governmental accredited bodies. I think unnecessary government intervention into private and family relationships should be minimized. I am very glad that the Government has accepted this view, and I believe the Committee stage amendments to be moved later will enrich the Bill and ensure consistency with the rights of individuals.

Another more important issue which unfortunately cannot be dealt with in this exercise is the adoption of mainland children by Hong Kong people. From the experience of the Government, Hong Kong people of Chinese origin will generally adopt children of Chinese origin only. Therefore, those who wish to adopt a child will very often go to the Mainland for adoption. The existing Adoption Ordinance has not directly dealt with adoption in the Mainland. Instead, it recognizes the status of the child adopted from the Mainland through recognizing overseas adoption that meets certain requirements. This is indeed undesirable. Particularly after the Bill is amended, intracountry adoption will become all the more out of place under the framework of the Adoption Ordinance, thus giving rise to much ambiguity, for it is neither local adoption nor intercountry adoption, and this will also give the impression that such adoption is far from formal. Moreover, adoption from the Mainland is nevertheless the most natural channel for adoption to Hong Kong people. So, during the scrutiny of the Bill, I had urged the authorities to look into and address this issue promptly, and the authorities had undertaken to do so.

Madam President, my particular concern for the Bill actually originates from a few years ago when I represented children adopted by Hong Kong people from the Mainland in the right of abode case. During the hearings on this case, I was deeply moved by the great and selfless love of the adoptive parents for their adopted children. Among these children, some have lost their birth parents when they were very young at age; some were abandoned by their parents; and some are even disabled and require special care. But still, the adoptive parents have thoroughly cared for and loved their children.

Adoption is in fact the most affectionate system in the human world. It should be encouraged in society, and under the laws of Hong Kong, adopted children are considered to be on a par with birth children. Unfortunately, the way the provisions of the Basic Law are written has deprived children adopted from the Mainland of their right of abode, and this, I think, is utterly regrettable. However, the authorities can still provide these adopted children from the Mainland with the greatest convenience through the immigration policies. To this end, the first step is to grant intracountry adoption a clear status and provide for suitable arrangements in the laws of Hong Kong, so that the adoptive families would feel at ease and find solace, and I would hence consider the unfairness reduced.

With these remarks, Madam President, I support the Second Reading of the Bill.

MS MIRIAM LAU (in Cantonese): Madam President, adoption arrangement aims to identify a permanent family for children whose parents are unable or unwilling to take care of them. So, adoption arrangement should primarily base on the best interests of children. After listening to the views of members of the Bills Committee and the relevant organizations on the Adoption (Amendment) Bill 2003, the Government has proposed some amendments to the arrangement for local adoption. The Liberal Party considers that these amendments have addressed the concerns of various sectors of the community and can protect the best interests of the adopted children. We, therefore, support the amendments.

The authorities have proposed a number of major amendments to the proposals in the Bill in relation to the adoption arrangement. First, the Bill proposes to prohibit a person, other than the Director of Social Welfare or any person authorized by the Director, from making private arrangements for the adoption of a child or placement of a child for adoption. The Liberal Party considers that although such adoptions are rare, if monitoring is lacking and when problems arise, it would do irrevocable harm to the adopted child. In fact, according to the information provided by the authorities, there have been problematic cases before. Therefore, if adoption is arranged by the SWD or accredited bodies authorized by the SWD, it could effectively prevent the child from being placed with an unsuitable family.

The Liberal Party believes that a permanent and stable family is very important to children. Therefore, during the process of adoption, it is more proper for the adoption or placement to be arranged by qualified and experienced professionals or organizations. This can prevent such problems as the lack of proper counselling and assessment, manipulation of adoption for pecuniary gain, and so on.

The Liberal Party has also noted that in many developed countries, such as Australia, England, Scotland, New Zealand, and so on, privately arranged adoption by unrelated persons is prohibited as a "play safe" measure to protect the adopted children.

In the meantime, to ensure that the adopted children are in safe custody, the applicant for an adoption order is required to authorize the Commissioner of Police to inform the Director of Social Welfare whether the applicant has previous criminal record. The Liberal Party supports this arrangement.

Given a gradual increase in cases of remarriage in society, the authorities have proposed to allow the step-parent to whom the birth parent of the child lawfully married to apply as the sole applicant for an adoption order in respect of the child. This, the Liberal Party, considers appropriate, for it enables the couple to become the legitimate parents of the child, which will have a positive effect on the physical and psychological development of the child.

During the scrutiny of this provision, the Bills Committee was concerned that under the original proposal, the adopted child must be born to his or her birth parent within wedlock before the spouse of the birth parent can make such an application as a sole applicant, while the parent of a child born out of wedlock must apply as a joint applicant.

We are glad to see that the authorities, in response to members' concern on the lawful wedlock requirement, will delete this provision and replace "birth parent" with "parent" to address the problem.

Madam President, the Bills Committee has, for many times, discussed the provision concerning adoption by a person of the opposite gender, particularly the adoption of a female child by a sole male applicant. The Liberal Party appreciates the concern of the Government, that section 5(3) may be sex discriminatory and the Government proposes an amendment to it in order to

ensure equal rights for all. However, I must emphasize that in making adoption arrangement, the most important principles are the protection of children and the best interests of children. Unfortunately indeed, there are often cases of sexual abuse of girls by males in society nowadays. The Liberal Party is, therefore, concerned that once this provision is repealed, the adopted female children may not be duly protected. In respect of adoption by a person of the opposite gender, we believe the Bills Committee is duty-bound to protect female children who have lost their parents, and the protection of the interests of female children and equality between the two sexes are entirely two different matters. These two matters are not in conflict and should not be lumped together. In response to members' concern, the Government has withdrawn the amendment to this provision. The Liberal Party supports this.

As regards the escort arrangements for intercountry adoptions, certainly, it is most desirable for the adopted parents to come to Hong Kong to escort their child back to their homeland. However, the Liberal Party understands that it is already not easy to identify suitable adoptive parents. This additional requirement may deter suitable adopters and hence make adoption more difficult. That said, the Liberal Party considers that the prospective adoptive parents should be encouraged to come to Hong Kong to escort their child back to their homeland as far as possible, because this can exemplify their love and care for their adopted child and help strengthen the bond and relationship between them.

The Liberal Party supports the passage of the Bill. We hope that after the enactment of the Bill, the various proposals in the Bill can be implemented as soon as possible to better the local adoption legislation.

Madam President, I so submit.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

DR LAW CHI-KWONG (in Cantonese): Madam President, through this speech, I mainly wish to express support on behalf of the Democratic Party and the social welfare sector for the amendment of the Ordinance as well as all the amendments to be proposed by the Secretary today.

Regarding the contents of the Bill, the Chairman of the Bills Committee has already given a detailed account in her speech and I do not wish to repeat the points here. I only wish to make one point and that is, the discussion and review on the amendment of the Adoption Ordinance have spanned more than 11 years, which is indeed too long. There are now many issues relating to the modernization of family laws, such as the issues relating to custody and residence which have already been discussed for six to seven years. I really hope that amendments to family laws can keep abreast of the changes in society and that we do not have to spend another decade or so before the amendments can be completed. On the issue of domestic violence, for instance, I hope the Government can improve the existing legislation early. With these remarks, Madam President, I support the Bill.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for the Environment, Transport and Works to speak.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in the absence of Secretary for Health, Welfare and Food): Madam President, the Adoption (Amendment) Bill 2003 (the Bill) seeks to improve the local adoption arrangements and give effect to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The overriding principle is to ensure that the adoption arrangements are made in the best interests of the child.

We are grateful to the Honourable Margaret NG and other members of the Bills Committee for their scrutiny of the Bill, the constructive advice they have rendered and their support of the proposals. Our appreciation also goes to the relevant welfare sector non-governmental organizations (NGOs) which have contributed their views and suggestions in the context of deliberating the legislative changes in the past few years and more recently when the provisions in the Bill were refined. On the basis of the discussion in the Bills Committee, a number of Committee stage amendments will be moved to fine-tune our policy

intentions, to address members' concerns and to make technical and consequential amendments. All the proposed amendments have been endorsed by the Bills Committee. The major amendments are outlined below.

The Bill seeks to require that all local and intercountry adoption arrangements be made by professional organizations, that is, the Social Welfare Department (SWD) or the NGOs duly accredited by the SWD. Adoptions by related persons, step-parents adoptions, or adoptions made in pursuance of an order of the Court fall outside the requirement. Professional input in the form of assessing the suitability of prospective adoptive parents and providing early counselling for birth and adoptive parents is crucial. This helps to ensure that the arrangement would be in a child's best interests, and that he or she is placed with the most suitable prospective adoptive parents within the shortest time span. Since the number of private local adoptions by unrelated persons has remained relatively small (three to seven cases each in the past five years), the Bill originally envisaged that unrelated local adoptions would primarily be made by the SWD, with the NGOs providing assistance as necessary.

Members of the Bills Committee considered that such arrangement should be enhanced and more agency choices should be provided to both birth and prospective adoptive parents, that is, both parties should be given the choice to make the local unrelated adoption arrangements through either the SWD or one of the accredited NGOs. We agree with members' views: a wider pool of prospective adoptive parents would also mean that the child may have more matching choices and this works to the child's advantage. Committee stage amendments will therefore be proposed to set out clearly the accreditation arrangements in respect of the NGOs, how these accredited bodies would make adoption arrangements, including assessing the suitability of prospective adoptive parents, receiving the results of criminal record check of such parents from the police, participating in the matching process where applicable, making arrangements for placement and seeing the adoption arrangements through.

Under the Bill, criminal sanctions would be imposed on unauthorized persons for making arrangements or placement for adoption by unrelated persons. Members of the Bills Committee have expressed concern over the wide scope of the definition of "making arrangement", and questioned whether well-intended parties would inadvertently be caught by such definition. To address members' concerns, Committee stage amendments will be proposed to tighten the scope of "making arrangement".

Members have also expressed concern over the proposal in the Bill to repeal the prohibition against a male sole applicant adopting a female infant, unless the Court is satisfied that there are special circumstances which justify the case as an exception. We note that almost all common law jurisdictions do not have such a prohibition which is seemingly perceived by some as discriminatory. Nonetheless, in view of the concern expressed by members that repealing the provision might erode the protection rendered to female infants, Committee stage amendments will be proposed to excise the repeal provision from the Bill so as to retain the prohibition.

In the course of examining the Bill, the Bills Committee also noted the regime covering the adoption arrangements between Hong Kong and the Mainland. For clarity, Committee stage amendments will be proposed to put it beyond doubt that arrangements in respect of intracountry adoption would not be caught by the relevant provisions in the Bill. While noting that intracountry adoption is outside the scope of the Bill, members have requested the Administration to further study the intracountry adoption arrangements. Indeed, in the long run, the need for and possibility of establishing formal arrangements in respect of intracountry adoption should be explored. We will study such need and consult the relevant Legislative Council Panel in due course.

A number of Committee stage amendments will also be proposed to cater for transitional arrangements and consequential amendments to other Ordinances to ensure clarity and consistency.

I hope Members will support the Bill and the amendments which will be proposed in the Committee stage.

Madam President, I support that the Bill be read the Second time.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adoption (Amendment) Bill 2003 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Adoption (Amendment) Bill 2003.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now 14 minutes to ten o'clock. I think it is now suitable time to suspend the Council until nine o'clock tomorrow morning.

Suspended accordingly at fourteen minutes to Ten o'clock.

Annex III

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGEAmendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "Director of Education's" and substituting "Permanent Secretary for Education and Manpower's".
1(2)	By deleting everything after "on" and substituting "1 January 2005."
2(b)	<p>(a) In subparagraph (ii), in the proposed definition of "manager", in paragraph (b), by deleting "40AH" and substituting "40AJA".</p> <p>(b) In subparagraph (iv), in the proposed definition of "sponsoring body", by deleting "Director" and substituting "Permanent Secretary".</p> <p>(c) By adding -</p> <p style="padding-left: 40px;">"(iva) in the definition of "supervisor", by repealing everything after "means" and substituting -</p> <p style="padding-left: 80px;">"-</p>

(a) in relation to a school without IMC, a manager who is -

(i) approved as the supervisor of the school under section 34 or 38(2) or under either of the repealed Ordinances; or

(ii) approved as the acting supervisor of the school under section 38A(2);

(b) in relation to an IMC school, a manager who is -

(i) appointed or elected under section 40AI(2) as the supervisor of the school; or

(ii) appointed or elected under section 40AI(2A) as the acting supervisor of the school.";".

- (d) In subparagraph (v), by deleting the proposed definition of "DSS school".
 - (e) In subparagraph (v), by deleting the proposed definition of "non-aided school in receipt of Government subsidies".
- 2(c) In the proposed section 3(2), by deleting "Director" and substituting "Permanent Secretary".
- 3 In the heading, by deleting "**Director**" and substituting "**Permanent Secretary**".
- 3(a) In subparagraph (ii), in the proposed section 8(1)(da)(ii), by deleting "40AH(2)" and substituting "40AJA(2)".
- 3(b) In the proposed section 8(3), by deleting "register maintained under subsection (1)(da) shall be made available in such manner as the Director" and substituting "entries referred to in subsection (1)(da)(i) and (ii) shall be made available in such manner as the Permanent Secretary".
- 4 By deleting everything after "Section" and substituting -
"9 is amended -

(a) by adding before subsection (1) -

“(1A) In this section,
“interested persons” means, in
relation to a school -

- (a) the owners of the
school;
- (b) the managers of the
school;
- (c) the teachers of the
school;
- (d) persons who are not
owners, managers or
teachers of the
school but manage
or take part in the
management of the
school; or
- (e) the students of the
school.”;

(b) in subsection (1), by repealing
“owners, managers, teachers and
pupils” and substituting
“interested persons”;

(c) in subsection (1)(a), by repealing
everything after “the Government”
and substituting a semicolon;

(d) in subsections (2), (3)(b) and
(5)(c), by repealing “owners,

managers, teachers or pupils" and
substituting "interested
persons".

- 7 (a) In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".
- (b) By adding -
- "(aa) in subsection (2), by repealing
"A supervisor" and substituting
"The supervisor of a school
without IMC";".
- 7(b) (a) In the proposed section 18A(3), by deleting
everything after "subsection (1)" and
substituting "with the consent or connivance
of a manager of the school, the manager
shall be guilty of an offence and shall be
liable on conviction to a fine at level 3
and to imprisonment for 3 months."
- (b) By deleting the proposed section 18A(4).
- 11 By deleting the clause.
- 12(a) By deleting subparagraph (i) and substituting -
- "(i) by repealing paragraph (d);".
- 12(b) (a) In the proposed section 30(1A), by deleting
"Director may" and substituting "Permanent

Secretary may”.

- (b) In the proposed section 30(1A), by deleting paragraphs (a) and (b) and substituting –

“(a) a school if the applicant –

- (i) is a bankrupt within the meaning of the Bankruptcy Ordinance (Cap. 6) or has entered into a voluntary arrangement under that Ordinance; or

- (ii) has previously been convicted in Hong Kong or elsewhere of a criminal offence punishable with imprisonment;

- (b) a school if the applicant is under the age of 18 years;

(c) a school if –

- (i) the applicant has attained the age of 70 years and he fails to produce a medical certificate issued by a registered medical practitioner within 2 months before the date

of his application
certifying that the
applicant is physically
fit to perform the
functions of a manager;
or

- (ii) the applicant is under
the age of 70 years and
he fails to produce,
upon a request by the
Permanent Secretary, a
medical certificate
issued by a registered
medical practitioner
after the date of such
request certifying that
the applicant is
physically fit to
perform the functions of
a manager; or

- (d) an IMC school or a school in
respect of which a submission
has been made under section
40BJ or 40BU if the applicant
has been registered as a
manager of 5 or more
schools.”.

- 12(c)
- (a) In the proposed section 30(2)(a), by deleting "if it appears to the Director" and substituting "without IMC if it appears to the Permanent Secretary".
 - (b) In the proposed section 30(2)(b)(i), by deleting "Director refuses to approve under section 40BL" and substituting "Permanent Secretary refuses to approve under section 40BL or 40BW".
 - (c) In the proposed section 30(2)(b)(ii), by adding "subject to any exemption granted under section 40AP," before "the registration".
 - (d) In the proposed section 30(2)(b), by deleting "則署" and substituting "則常任秘書".
- 13(a)(iv)
- (a) In the proposed section 31(1)(g), by deleting "Director" and substituting "Permanent Secretary".
 - (b) In the proposed section 31(1)(g)(i), by deleting everything after "without" and substituting "the consent of the committee from all meetings of the committee in a school year; and".
 - (c) By deleting the proposed section 31(1)(h) and (i).
 - (d) In the proposed section 31(1)(j) —

- (i) by deleting "Director" and substituting "Permanent Secretary";
- (ii) by adding "physically" before "fit".
- (e) In the proposed section 31(1)(k), by deleting "署" and substituting "常任秘書".

- 13(b)
- (a) By deleting subparagraph (i) and substituting -
 - "(i) by repealing paragraph (a);".
 - (b) In subparagraph (ii), in the proposed section 31(2)(aa), by deleting everything after "receives a" and substituting "notice under section 39(2)(a) or 40AJ(1)(b)(i) in respect of the manager.".
 - (c) In subparagraph (ii), in the proposed section 31(2)(ab), by deleting "署" and substituting "常任秘書".

13

By adding -

"(c) by adding -

"(2A) The Permanent Secretary shall cancel the registration of a manager of a school without IMC if it appears to him that the manager is no longer acceptable as a manager of the school to the majority of the managers of the school."."

17

(a) In the heading, by deleting "**Parts**" and substituting "**Part IIIB**".

(aa) By deleting the heading of the proposed Part IIIB and substituting -

"PART IIIB

MANAGEMENT OF IMC SCHOOLS".

(ab) By deleting the proposed section 40AA and substituting -

"40AA. Application of certain provisions of this Part

Sections 40AC to 40BG apply to IMC schools only."

(ac) In the proposed section 40AB, in the definition of "alternate manager", by adding ", alternate sponsoring body manager" before "or".

(ad) In the proposed section 40AB, by adding -

"alternate sponsoring body manager" (替

代辦學團體校董) means a manager who is nominated for registration as such under section 40AK;"

(ae) In the proposed section 40AB, by deleting the definition of "chairperson".

(af) In the proposed section 40AB, by deleting the definition of "commencement date".

(b) In the proposed section 40AB, by deleting the definition of "operating school".

(ba) In the proposed section 40AB, in the definition of "parent", by deleting

everything after "pupil," and substituting -

"includes -

(a) a guardian of the pupil; and

(b) a person who is not the
parent or guardian of the
pupil but has the actual
custody of the pupil;".

(bb) In the proposed section 40AB, by deleting
the definition of "planned school".

(bc) In the proposed section 40AB, in the
definition of "scheduled opening date", by
deleting "Director" and substituting
"Permanent Secretary".

(bd) In the proposed section 40AB, in the
definition of "specialist staff", in
paragraph (b), by deleting "Director" and
substituting "Permanent Secretary".

(be) In the proposed section 40AB, by adding -
"
"specified school" (指明學校) means a
school specified in Schedule 3;".

(c) In the proposed section 40AB, in the
definition of "sponsoring body manager" -

(i) by deleting "by the sponsoring
body";

(ii) by deleting "董;" and substituting
"董".

(ca) In the proposed section 40AB, in the

definition of "teacher", by deleting everything after "means" and substituting -
"a permitted teacher or registered teacher employed in a school -

(a) to occupy a teacher post in the establishment of staff provided for in the code of aid for primary schools, code of aid for secondary schools or code of aid for special schools; or

(b) for a term for not less than 12 months to perform teaching duties or other duties directly related to teaching;".

(cb) In the proposed section 40AB, in the definition of "teacher manager", by deleting "elected" and substituting "nominated".

(cc) By adding -

**"40ABA. Secretary may amend
Schedule 3**

(1) The Secretary for Education and Manpower may by notice published in the Gazette amend Schedule 3.

(2) A school shall not be specified in Schedule 3 unless -

(a) the school is a primary

school or secondary

school;

(b) the school is neither an aided school nor a DSS school;

(c) the school is a school without IMC;

(d) the school is not operated for the purpose of making profit;

(e) the sponsoring body of the school is not a profit-making organization;

(f) the school receives any subsidy from the Government; and

(g) the school is, in the opinion of the Permanent Secretary, financially sound.".

(cd) In the proposed section 40AD(1)(a), by deleting "Director" and substituting "Permanent Secretary".

(ce) In the proposed section 40AD(1)(b), by deleting "out".

(d) In the proposed section 40AD(1), by adding -
"(ca) deciding the mode of receiving

government aid;”.

- (da) In the proposed section 40AD(2)(a), by adding “in accordance with the vision and mission set by the sponsoring body” after “school”.
- (db) In the proposed section 40AD(2)(c), by deleting “Director” and substituting “Permanent Secretary”.
- (dc) In the proposed section 40AD(2)(f), by deleting “self-evaluation” and substituting “self-improvement of the school”.
- (dd) In the proposed section 40AE(1), by deleting everything after “with,” and substituting “the proper management, administration or operation of the school in accordance with the vision and mission and the general educational policies and principles set by the sponsoring body of the school.”.
- (de) In the proposed section 40AE(2)(b), by adding “subject to section 40AEA,” before “employ”.
- (e) In the proposed section 40AE(2)(d), by deleting “or received from the Government”.
- (ea) In the proposed section 40AE(2), by adding —
 - “(da) handle funds and assets received from the Government in the capacity of a trustee;”.
- (eb) In the proposed section 40AE(3), by deleting

paragraph (b) and substituting -

"(b) guidelines (if any) issued by the
sponsoring body of the school
for -

(i) raising funds (including
borrowing money); or

(ii) entering into any contract,
agreement or arrangement
involving funds other than
funds received from the
Government;".

(ec) In the proposed section 40AE(3)(c), by
deleting everything after "school) the" and
substituting "relevant code of aid;".

(ed) In the proposed section 40AE(3)(d), by
deleting "Director" and substituting
"Permanent Secretary".

(ee) In the proposed section 40AE, by adding -

"(4) Without prejudice to the
generality of subsection (3), if a
person is employed by the incorporated
management committee of an aided school
to occupy a post in the establishment
of staff provided for in the relevant
code of aid, his terms and conditions
of service determined pursuant to
subsection (2)(b) must conform with
those provided for in the relevant code

of aid in relation to the post.

(5) In this section, "relevant code of aid" means -

- (a) in relation to an aided school which is a primary school, the code of aid for primary schools;
- (b) in relation to an aided school which is a secondary school, the code of aid for secondary schools;
- (c) in relation to an aided school which is a special school, a practical school or a skills opportunity school, the code of aid for special schools."

(f) By adding after the proposed section 40AE -

**"40AEA. Power of sponsoring body
over employment of
teaching staff**

(1) The sponsoring body of a school which is also the sponsoring body of another school -

- (a) may request -
 - (i) the incorporated

management committee of
the first-mentioned
school to terminate the
employment of a person
as the principal of the
school; and

- (ii) the incorporated
management committee of
the other school to
recommend for approval
the person to be the
principal of the school
under section 53 or 57;

(b) may request -

- (i) the incorporated
management committee of
the first-mentioned
school to terminate the
employment of a person
as a teacher of the
school; and

- (ii) the incorporated
management committee of
the other school to
employ the person as a
teacher of the same rank
of the school.

(2) A sponsoring body shall not

request the taking of any action under subsection (1) unless -

- (a) the action is conducive to the professional development of the person concerned;
- (b) the action is necessary to avoid or alleviate over-establishment of staff due to a reduction of classes in the school concerned; or
- (c) the Permanent Secretary approves the request upon -
 - (i) an application by the sponsoring body; and
 - (ii) other good cause being shown to his satisfaction.

(3) An incorporated management committee shall take such action within its lawful authority as is necessary for the compliance with a request made of it under subsection (1).".

- (fa) In the proposed section 40AF(1), by deleting "or the sponsoring body" and substituting ", the sponsoring body or any other person".
- (fb) By deleting the proposed subheading **"Composition of incorporated management committee"** before the proposed section 40AH

and substituting "**Supervisor**".

(fc) By deleting the proposed section 40AH.

(fd) In the proposed section 40AI, by deleting everything before subsection (3) and substituting -

"40AI. Supervisor

(1) A school shall have a supervisor.

(2) The supervisor of a school -

(a) must be a manager of the school;

(b) must be -

(i) appointed by the sponsoring body of the school; or

(ii) elected by the managers of the school,

in accordance with the

constitution of the

incorporated management

committee of the school; and

(c) shall hold and vacate office as such in accordance with the constitution.

(2A) If the supervisor of a school is unable to perform his functions during a period of not less than 28 days due to absence from Hong Kong or illness -

(a) (in the case of an appointed

supervisor) the sponsoring body of the school shall appoint another manager of the school as the acting supervisor to act in the place of the supervisor during the period;

(b) (in the case of an elected supervisor) the other managers shall elect amongst themselves an acting supervisor to act in the place of the supervisor during the period.”.

(fe) In the proposed section 40AI(3), by deleting “chairperson” where it twice appears and substituting “supervisor”.

(g) In the proposed section 40AI(4), by adding “in writing” after “give notice”.

(ga) In the proposed section 40AI(4)(a), by deleting “chairperson to the Director” and substituting “supervisor to the Permanent Secretary”.

(gb) In the proposed section 40AI(4)(b), by deleting everything after “subsequent” and substituting “supervisor to the Permanent Secretary within 14 days after his election or appointment.”.

(gc) In the proposed section 40AI(5), by deleting "chairperson and such other information as the Director" and substituting "supervisor and such other information as the Permanent Secretary".

(gd) In the proposed section 40AJ, by deleting everything before subsection (1)(b) and substituting -

"40AJ. Functions of supervisor

(1) The supervisor of a school shall -

(a) preside over the meetings of the incorporated management committee of the school;"

(ge) In the proposed section 40AJ(1)(b), by deleting "Director" and substituting "Permanent Secretary".

(h) In the proposed section 40AJ(1)(d), by deleting "of the event to the Director" and substituting "in writing of the event to the Permanent Secretary".

(ha) In the proposed section 40AJ(3), by deleting "chairperson" and substituting "supervisor".

(hb) By deleting the proposed subheading "Election and nomination of managers and vacation of office" before the proposed section 40AK and substituting "Composition of incorporated management committee and

office of managers".

(hc) By adding immediately before the proposed section 40AK -

**"40AJA. General requirement
of composition**

(1) An incorporated management committee shall, subject to the other provisions of this Ordinance, be constituted in accordance with the constitution of the committee.

(2) Without prejudice to subsection (1), the composition of an incorporated management committee as provided for in its constitution shall be -

- (a) subject to subsection (3),
such number of sponsoring
body manager as the school
sponsoring body may nominate;
- (b) the principal of the school,
who shall be an ex-officio
manager;
- (c) not less than one teacher
manager;
- (d) not less than -
 - (i) (in the case of a school
other than a bi-
sessional school) one
parent manager; or

- (ii) (in the case of a bi-sessional school) one parent manager for each of the A.M. session and P.M. session;
- (e) one or more alumni managers where such manager or managers is or are nominated;
- (f) not less than one independent manager;
- (g) not more than one alternate sponsoring body manager;
- (h) where the constitution allows the nomination of not more than one teacher manager, one alternate teacher manager; and
- (i) where the constitution allows the nomination of -
 - (i) not more than one parent manager, one alternate parent manager; or
 - (ii) (in the case of a bi-sessional school) not more than one parent manager for the A.M. session and one parent manager for the P.M.

session, one alternate
parent manager for the
A.M. session and one
alternate parent manager
for the P.M. session.

(3) The numbers of sponsoring body
manager shall not exceed 60% of the maximum
number of managers that the incorporated
management committee may have under its
constitution.

(4) In calculating the maximum number
of managers for the purposes of subsection
(3), an alternate manager or a manager
appointed under section 41 shall not be
counted.

(5) No manager shall serve in an
incorporated management committee in more
than one capacity mentioned in any paragraph
of subsection (2).".

(hd) In the proposed section 40AK, by deleting
everything after "school may" and
substituting -

"nominate -

(a) such number of persons
for registration as
sponsoring body manager
of the school as may be
provided for in the

constitution of the
incorporated management
committee of the school;
and

- (b) a person for
registration as
alternate sponsoring
body manager of the
school."

(he) By deleting the proposed section 40AL and
substituting -

"40AL. Nomination of teacher manager

(1) The principal of a school shall
nominate such number of teachers of the
school for registration as teacher manager
or alternate teacher manager of the school
as may be provided for in the constitution
of the incorporated management committee of
the school.

(2) A person nominated under
subsection (1) -

- (a) must be a teacher of the
school;
- (b) must not be the principal of
the school;
- (c) must be elected in that
behalf in an election -
- (i) held pursuant to

the constitution of
the incorporated
management
committee of the
school;

(ii) in which all
teachers of the
school have equal
voting right and
right of
candidature;

(iii) the voting for
which is conducted
by secret ballot;
and

(iv) the system of which
is otherwise fair
and transparent.

(3) In this section, "teachers"
includes, in relation to a special school,
the specialist staff of the school."

(i) In the proposed section 40AM(3), by deleting
everything after "under its" and
substituting -

"constitution only -

- (a) parents of current
pupils of the school; or
- (b) serving teachers of the

school,

may elect or become office-bearers of
the body.”.

(ia) In the proposed section 40AM(5), by deleting
paragraphs (a) and (b) and substituting -

“(a) must be a parent of a current
pupil of the school;

(b) must not be a teacher of the
school; and

(c) must be elected in that behalf in
an election -

(i) conducted by the
recognized parent-
teacher association of
the school;

(ii) in which all parents of
the current pupils of
the school have equal
voting right and right
of candidature;

(iii) the voting for which is
conducted by secret
ballot; and

(iv) the system of which is
otherwise fair and
transparent.”.

(ib) In the proposed section 40AN(1), by deleting
“of a school” and substituting “or

sponsoring body of a school, as may be provided for in the constitution of the committee".

(ic) In the proposed section 40AN(2), by deleting "of a bi-sessional school" and substituting "or sponsoring body of a bi-sessional school, as may be provided for in the constitution of the committee".

(id) In the proposed section 40AN(3), by adding before paragraph (a) -

"(aa) its membership is open to all alumni of the school;".

(ie) In the proposed section 40AN(3), by adding after paragraph (b) "In this subsection, a reference to school includes a reference to the A.M. session or P.M. session of a bi-sessional school.".

(j) In the proposed section 40AO(2)(a), by adding "or (where applicable) specialist staff" after "teacher".

(ja) In the proposed section 40AO(2)(b), by deleting "the parent" and substituting "a parent".

(jb) In the proposed section 40AO(2)(d)(ii), by deleting "or parent or a child" and substituting "or a grand-parent, parent, brother, sister, child or grand-child".

(jc) In the proposed section 40AO(2)(d), by

deleting everything after subparagraph (iii) and substituting "of the governing body (however described) of the sponsoring body of the school."

(jd) In the proposed section 40AP(2)(a), by deleting "may be registered" and substituting "shall be nominated for registration".

(je) In the proposed section 40AP(2)(b), by deleting "may be registered" and substituting "shall be nominated for registration".

(k) In the proposed section 40AP, by adding -
"(2A) If the incorporated management committee of a school is established under section 40BM, the first parent manager of the school shall be nominated for registration as such at any time within 3 months from the establishment of the committee."

(ka) In the proposed section 40AP(3) and (4), by deleting "Director" and substituting "Permanent Secretary".

(kb) In the proposed section 40AP, by deleting subsection (5) and substituting -

"(5) The Permanent Secretary shall decide an application under subsection (3) by -"

- (a) where he is satisfied that -
 - (i) the incorporated management committee has taken all reasonable steps to secure compliance with the requirement; and
 - (ii) it is reasonable in the circumstances of the case to grant the exemption applied for, granting the exemption subject to such condition (if any) as he thinks fit; or
- (b) where he is not satisfied in the manner prescribed in paragraph (a), refusing to grant the exemption.”.
- (kc) In the proposed section 40AP(6), by deleting “Director shall not take any action under section 22, 31 or 41 in respect of the school concerned only because that” and substituting “Permanent Secretary shall not take any action under section 22, 31 or 41 in respect of the school concerned only because”.
- (kd) In the proposed section 40AQ, by adding -
 - “(1A) An alternate sponsoring body

manager of a school shall not vote on any matter to be resolved by the incorporated management committee by voting unless -

(a) (in the case of a matter to be resolved at a meeting of the committee) any sponsoring body manager of the school is absent from the meeting;

(b) (in the case of a matter to be resolved otherwise) any sponsoring body manager of the school is, for any reason, unable to vote on the matter.”.

(ke) In the proposed section 40AQ(4), by deleting “30(2), 31(2)(a),”.

(l) In the proposed section 40AQ(4), by adding before paragraph (a) -

“(aa) an alternate sponsoring body manager shall not be counted unless there is a vacancy of sponsoring body manager of the school for the time being;”.

(la) In the proposed section 40AQ(5), by adding

before paragraph (a) -

"(aa) an alternate sponsoring body manager of the school shall not be counted unless there is a vacancy of sponsoring body manager of the school for the time being;".

(1b) In the proposed section 40AQ(6), by adding "(1A)," after "subsection".

(1c) In the proposed section 40AQ, by adding -

"(6A) An alternate teacher manager and a teacher manager of a school shall be elected in the same manner for nomination for registration as a manager.

(6B) An alternate parent manager and a parent manager of a school shall be elected in the same manner for nomination for registration as a manager.".

(1d) By deleting the proposed section 40AR and substituting -

"40AR. Endorsement of application for registration as manager

If a person is nominated for registration as a manager of a school under this Part and he applies for such registration, his application shall be -

(a) endorsed by the body or person that nominates

him; and

- (b) (where he is on the list of proposed managers referred to in section 40BL(1)(a) or 40BW(1)(a)) endorsed by the sponsoring body in such manner as the Permanent Secretary may specify.”.

(le) In the proposed section 40AS(2), by deleting “one month” and substituting “three months”.

(m) In the proposed section 40AS(2)(a), by deleting “or elected”.

(ma) In the proposed section 40AS(2)(b), by deleting “Director” and substituting “Permanent Secretary”.

(mb) In the proposed section 40AS(3), by deleting “Director” and substituting “Permanent Secretary”.

(mc) In the proposed section 40AS(4), by deleting “or elected”.

(md) By deleting the proposed section 40AT.

(me) By adding immediately before the proposed section 40AU –

“40ATA. Parent manager or independent manager ceases to hold office under certain circumstances

(1) If a parent manager ceases to be a parent of a current pupil of the school in a school year, his term of office as a manager shall continue until its expiry or the end of the school year, whichever is the earlier.

(2) If in a school year an independent manager becomes a person referred to in section 40AO(2)(a), (b) or (d), his term of office as a manager shall continue until its expiry or the end of the school year, whichever is the earlier."

(n) In the proposed section 40AU(1), by deleting "Director" and substituting "Permanent Secretary".

(na) In the proposed section 40AU(2)(a), by deleting "or a teacher of the school".

(nb) In the proposed section 40AU(2)(b), by deleting "a teacher of" and substituting "employed in".

(nc) In the proposed section 40AV, in the heading, by deleting "**teacher manager, etc.**" and substituting "**managers**".

(nd) In the proposed section 40AV, by deleting subsections (1) and (2) and substituting -

"(1) An incorporated management committee shall, upon receiving a request

under subsection (2), (3), (4) or (5), issue a notice in writing to the Permanent Secretary as regards the cancellation of the registration of the manager specified in the request.

(2) If -

(a) the teachers and (where applicable) specialist staff of a school pass a resolution that any teacher manager or alternate teacher manager of the school is not suitable to continue to hold office as such; and

(b) the resolution is passed in a manner which is, as far as reasonably practicable, similar to the manner in which the manager is elected for nomination,

the principal of the school shall make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of the manager."

(ne) In the proposed section 40AV(6), by deleting "(2),".

(o) In the proposed section 40AV(6)(b), by deleting "or elected for nomination, as may

be appropriate" and substituting "for nomination".

(oa) In the proposed 40AV, by adding -

"(6A) The incorporated management committee of a school may issue a written notice to the Permanent Secretary as regards the cancellation of the registration of any independent manager of the school.".

(ob) In the proposed section 40AW(1)(a), by deleting "Director" and substituting "Permanent Secretary".

(oc) In the proposed section 40AW, by deleting subsections (2) and (3) and substituting -

"(2) An incorporated management committee may by resolution amend its constitution in the manner provided for in the constitution.

(3) An amendment to the constitution of an incorporated management committee -

(a) shall be lodged with the Permanent Secretary; and

(b) shall not take effect before the expiry of one month after it is so lodged.

(3A) The Permanent Secretary may, by notice in writing to the incorporated management committee concerned, object to an amendment lodged with him before the amendment takes effect. The reason for the objection shall be specified in the notice.

(3B) Subject to section 66(1)(ba), an amendment objected to by the Permanent Secretary shall be void.

(3C) The Permanent Secretary may, by notice to an incorporated management committee, require its constitution to be amended in such manner as he may specify to secure compliance with law and general education policies. The committee shall amend its constitution accordingly.

(3D) Subsections (3) and (3A) do not apply to an amendment under subsection (3C).

(3E) If an objection under subsection (3A) to an amendment of constitution which is intended to take effect on a certain date ("original effective date") is reversed under section 64, the amendment shall -

(a) where the Permanent Secretary does not appeal against the reversal under section 65 within the period of 14 days referred to in that section, take effect -

(i) at the expiry of that period; or

(ii) on the original effective date,

whichever is the later;

(b) where the Permanent Secretary appeals against the reversal under section 65 and the reversal is upheld, take effect on -

(i) the date on which the reversal is upheld; or

(ii) the original effective

date,

whichever is the

later.".

- (od) In the proposed section 40AW(4), by deleting "the approval of an amendment to its constitution, lodge a copy of its constitution as amended with the Director" and substituting "any amendment to its constitution takes effect, lodge a copy of its constitution as amended with the Permanent Secretary".
- (oe) In the proposed section 40AX(1), by deleting ") to a manager other than an alternate manager" and substituting "and regulation 76 of the Education Regulations (Cap. 279 sub. leg. A)) to any manager of the school".
- (p) By deleting the proposed section 40AY and substituting -

**"40AY. Permanent Secretary's nominee
may attend meeting**

If it appears to the Permanent Secretary that the attendance of a meeting of the incorporated management committee of the school by a public officer will be conducive to the operation and performance of the school -

- (a) the Permanent Secretary

may, by notice in writing to the committee, nominate the public officer to attend the meeting; and

- (b) the public officer may attend the meeting and offer such advice at the meeting as he thinks fit."

(pa) In the proposed section 40AZ(1)(a)(ii) and (c), by deleting "Director" wherever it appears and substituting "Permanent Secretary".

(pb) In the proposed section 40AZ(2)(b), by deleting "chairperson of the incorporated management committee and one other manager authorized" and substituting "supervisor of the school and one other manager authorized by the incorporated management committee of the school".

(pc) In the proposed section 40AZ(4)(c) and (e) and (5)(a), by deleting "Director" wherever it appears and substituting "Permanent Secretary".

(pd) In the proposed section 40AZ(6), by deleting "or a public accountant within the meaning of" and substituting "(practising) as

defined in".

(pe) In the proposed section 40BC, by deleting paragraph (c) and substituting -

"(c) the properties owned by the committee immediately before its dissolution shall be vested in the Permanent Secretary as the corporation sole constituted under the Permanent Secretary for Education and Manpower Incorporation Ordinance (Cap. 1098) who shall -

(i) as far as reasonably practicable, apply the properties to settle the liabilities (if any) of the committee which are outstanding immediately before its dissolution in such manner as he considers fair;

(ii) where after such settlement (if any) any property which was donated to the committee remains, return the property to the donor unless the donor

indicated at the time of the donation that he did not wish to reclaim the property in the event of the dissolution of the committee;

(iii) where after such settlement or return (if any) any property remains, apply the property towards any purpose which is conducive to education in Hong Kong.”.

(q) In the proposed section 40BF, by deleting paragraphs (a) and (b) and substituting -

“(a) keep a register of all declarations made under section 40BD;

(b) keep a register of all disclosures made under section 40BE;

(c) permit any inspector of schools to inspect the register kept under paragraph (a) or (b) at any reasonable time to enable the Permanent Secretary to ascertain whether section 40BD or 40BE, as the case may be, is complied with;

and

- (d) permit the public to inspect the register kept under paragraph (b) at any reasonable time."

(qa) In the proposed section 40BG(2), by deleting everything after "omitted to be" where it first appears and substituting "done by him in good faith in the performance or purported performance of any function of his office as the manager."

(qb) In the proposed section 40BG, by adding -

"(2A) No civil proceedings shall be brought against a manager of a school for anything done or omitted to be done by or on behalf of the incorporated management committee of the school unless he has not acted in good faith in relation to the thing or omission."

(qc) In the proposed section 40BG(3), by deleting "subsection (2)(b)" and substituting "subsection (2)".

(qd) In the proposed section 40BH, by deleting everything before "in writing" and substituting -

"40BH. Establishment of incorporated management committee in respect of operating DSS school or specified school

The sponsoring body of-

- (a) a DSS school which -
 - (i) is a school without IMC;
and
 - (ii) has commenced operation
(whether or not before 1 January 2005);
or

(b) a specified school,
may notify the Permanent Secretary".

- (qe) By deleting the proposed section 40BI.
- (r) By deleting the proposed section 40BJ and substituting -

**"40BJ. Submission for the purpose
of establishment of
incorporated management
committee in respect of
operating school**

- (1) This section applies to -
 - (a) an aided school which -
 - (i) is a school without IMC; and
 - (ii) has commenced operation before 1 January 2005;
 - (b) a DSS school in respect of which a notice has been given under section

40BH; and

- (c) a specified school in respect of which a notice has been given under section 40BH.

(2) The sponsoring body of a school shall submit to the Permanent Secretary a draft of the constitution of the proposed incorporated management committee.

(3) A submission made under subsection (2) shall be made -

- (a) in the case of an aided school, by 1 July 2009;
- (b) in the case of a DSS school or specified school, within 6 months from the date of the notice given under section 40BH in respect of the school.

(4) The sponsoring body shall provide to the Permanent Secretary such further information relating to the submission as he may reasonably require for the purpose of enabling him to exercise his power under section 40BK or 40BL.

- (5) The Legislative Council may, by a resolution passed after 1 October 2008 but before 1 July 2009, amend subsection (3)(a) by repealing "1 July 2009" and substituting a date after 1 July 2009 but before 2 July 2011."
- (ra) In the proposed section 40BK, by deleting "Director" and substituting "Permanent Secretary".
- (rb) By deleting the proposed section 40BL and substituting -

"40BL. Approval of list of proposed managers

(1) Upon the approval of the draft constitution by the Permanent Secretary, the sponsoring body shall submit to the Permanent Secretary -

- (a) a list of the proposed managers of the school;
and
- (b) an application by each proposed manager for registration as a manager of the school that complies with section 28.

(2) The Permanent Secretary shall approve a list of proposed managers

submitted under subsection (1) if -

- (a) the composition of the
proposed incorporated
management committee -
 - (i) complies with
this Part; and
 - (ii) is consistent
with the draft
of the
constitution
as approved
under section
40BK; and
- (b) having regard to the
grounds prescribed in
section 30, he is
satisfied that all the
proposed managers are
fit for registration as
a manager of the
school."

(rc) In the proposed section 40BM(1), by deleting
"Director" and substituting "Permanent
Secretary".

(rd) In the proposed section 40BM(2)(c), by
deleting everything before "shall be
established" and substituting -

"(c) the incorporated management

committee”.

(re) In the proposed section 40BM(3)(c), by deleting “chairperson and one other manager authorized” and substituting “supervisor of the school and one other manager authorized by the committee”.

(s) In the proposed section 40BM(4), by adding “by the Government” after “payable”.

(sa) In the proposed section 40BP(1), by deleting “before the commencement date”.

(sb) In the proposed section 40BR(1)(b), by deleting “Director” and substituting “Permanent Secretary”.

(sc) In the proposed section 40BR(1), by deleting everything after paragraph (b) and substituting -

“the Permanent Secretary may -

(c) without prejudice to section 41, appoint one or more persons to be the managers of the school; and

(d) without prejudice to section 31, cancel the registration of any manager of the school.”.

(sd) In the proposed section 40BR, by adding -

“(1A) A manager appointed under

subsection (1) -

(a) shall hold office

until -

(i) the term of

office for

which he is

appointed

expires; or

(ii) the

incorporated

management

committee of

the school is

established,

whichever is the

earlier; and

(b) shall for the purpose of

this Ordinance be

treated as a manager

appointed under section

41.".

(se) In the proposed section 40BR(2), by deleting "Director" and substituting "Permanent Secretary".

(t) In the proposed section 40BS, by deleting "the commencement date may notify the Director" and substituting "1 January 2005 may notify the Permanent Secretary".

- (ta) By deleting the proposed section 40BT.
- (tb) In the proposed section 40BU, by deleting everything before subsection (3) and substituting -

"40BU. Submission for the purpose of establishment of incorporated management committee in respect of planned school

- (1) This section applies to -
 - (a) an aided school the scheduled opening date of which falls on or after 1 January 2005; and
 - (b) a DSS school in respect of which a notice has been given under section 40BS.

(2) The sponsoring body of a school shall submit to the Permanent Secretary -

- (a) a draft of the constitution of the proposed incorporated management committee; and
- (b) an application for registration of the school under section

11.”.

- (tc) In the proposed section 40BU(3)(b), by deleting “Director” and substituting “Permanent Secretary”.
- (td) In the proposed section 40BU(4), by deleting “Director” and substituting “Permanent Secretary”.
- (te) In the proposed section 40BV, by deleting “Director” and substituting “Permanent Secretary”.
- (u) By deleting the proposed section 40BW and substituting -

**“40BW. Approval of list of
proposed managers**

(1) Upon the approval of the draft constitution by the Permanent Secretary, the sponsoring body shall submit to the Permanent Secretary -

- (a) a list of the proposed managers of the school;
and
- (b) an application by each proposed manager for registration as a manager of the school that complies with section 28.

(2) The Permanent Secretary shall

approve a list of proposed managers
submitted under subsection (1) if -

- (a) the composition of the
proposed incorporated
management committee -
 - (i) complies with
this Part; and
 - (ii) is consistent
with the draft
of the
constitution
as approved
under section
40BV; and

- (b) having regard to the
grounds prescribed in
section 30, he is
satisfied that all the
proposed managers are
fit for registration as
a manager of the
school."

(ua) In the proposed section 40BX(1), by deleting
"Director" and substituting "Permanent
Secretary".

(ub) In the proposed section 40BX(2), by deleting
everything after "incorporation," and
substituting "the incorporated management

committee shall be established as a body corporate with perpetual succession.”.

- (uc) In the proposed section 40BX(3)(c), by deleting “chairperson and one other manager authorized” and substituting “supervisor of the school and one other manager authorized by the committee”.
- (ud) In the proposed section 40BZ(1)(a), by deleting “a sponsoring body” and substituting “the scheduled opening date of an aided school falls on or after 1 January 2005 and the sponsoring body of the school”.
- (ue) In the proposed section 40BZ(1)(b), by deleting everything after “the” and substituting “Permanent Secretary refuses to issue a certificate of incorporation under section 40BX in respect of the school,”.
- (v) In the proposed section 40BZ(1), by deleting “Director,” and substituting “Permanent Secretary,”.
- (va) In the proposed section 40BZ(2), by deleting “Director” and substituting “Permanent Secretary”.
- (vb) By deleting everything after the proposed section 40BZ and substituting -

“40CA. Pre-incorporation contract

Where -

- (a) any person enters into a

contract with another
party for the supply of
goods or service for the
benefit of a school
before the incorporated
management committee of
the school is
established under
section 40BX;

(b) he enters into the
contract with the
written authority of the
sponsoring body of the
school;

(c) before he enters into
the contract he advises
the other party that the
incorporated management
committee of the school
will upon its
establishment become a
party to the contract by
virtue of this section;
and

(d) the contract is
subsisting immediately
before the establishment
of the committee,

the following provisions apply on the establishment of the committee -

(e) the committee shall for all purposes substitute for the person as the party to the contract and shall be regarded as having always been the party;

(f) all rights and liabilities of the person under the contract shall vest in the committee; and

(g) the person shall cease to be a party to the contract.

**Provisions applicable where
a school ceases to be
an IMC school**

**40CB. An aided IMC school may
become a DSS school
without IMC**

(1) If an IMC school which is an aided school becomes a DSS school, the sponsoring body of the school may apply to the Permanent Secretary for an approval for the school to become a school without IMC.

(2) The Permanent Secretary shall

grant an approval applied for if -

- (a) all conditions (if any) subject to which the school may become a DSS school have been fulfilled;
- (b) a company has been incorporated under the Companies Ordinance (Cap. 32) for the purposes of operating the school as stated in its memorandum of association;
- (c) the company has been designated as a school management company under section 3(2);
- (d) applications have been made under section 28 for the registration of a sufficient number of people as the managers of the DSS school; and
- (e) a person has been recommended under section 38 to be the supervisor of the DSS

school.

(3) Upon the granting of an approval in relation to a school -

- (a) the incorporated management committee shall be dissolved;
- (b) the name of the committee shall be removed from the register of incorporated management committees; and
- (c) Schedule 2 has effect in relation to the dissolution of the committee."

New

By adding -

"17A. Heading substituted

The subheading **"Appointed managers"** before section 41 is repealed and the following substituted -

"PART IIIC

PERMANENT SECRETARY MAY APPOINT MANAGERS".

18

By deleting the clause and substituting -

"18. Appointment of managers by Permanent Secretary

Section 41(3) is amended by adding "or incorporated management committee (as may be appropriate)" before "in respect".

22

By deleting the proposed section 57A and substituting -

"57A. Selection of principal of IMC school

(1) This section applies to an IMC school.

(2) Before recommending any person under section 57, the incorporated management committee shall appoint a principal selection committee.

(3) A principal selection committee shall -

(a) be accountable to the incorporated management committee; and

(b) be composed of -

(i) representatives of the sponsoring body of the school;

(ii) managers of the school acting as representatives of the incorporated management committee; and

(iii) (where applicable) such other persons as may be provided for in the constitution of the incorporated management committee.

(4) A principal selection committee shall select in an open, fair and transparent manner a suitable person for recommendation under section 57 from candidates nominated in an open, fair and transparent manner by the sponsoring body or the incorporated management committee of the school or both as may be provided for in the constitution of the incorporated management committee.

(5) The incorporated management committee of a school shall recommend under section 57 the person selected by the principal selection committee.

(6) Subsections (2), (3), (4) and (5) do not apply if -

- (a) the sponsoring body of the school makes a request of the incorporated management committee under section 40AEA(1)(a)(ii); or
- (b) the Permanent Secretary exempts, on an application by the sponsoring body or incorporated management committee and upon good cause being shown to his satisfaction, the committee from those subsections in respect of any principal of the school."

- 24 By deleting "40AH(2)(b)" and substituting
"40AJA(2)(b)".
- 26 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".
- 26(c) (a) By deleting -
"Section 40BI. Sponsoring body."
and substituting -
"Section 40AW. Incorporated
management
committee.".
- (b) By deleting -
"Section 40BR(1) Manager concerned."
(c)(i).
and substituting -
"Section 40BR Sponsoring body."
(1)(c).
- (c) By deleting -
"Section 40BR(1) Sponsoring body."
(c)(ii) or (d).
and substituting -
"Section 40BR Manager concerned."
(1)(d).
- (d) By deleting -
"Section 40BT. Sponsoring body.".
- New By adding -
"26A. Permission to operate school

or to act etc. pending appeal

Section 66(1) is amended by adding -

"(ba) by notice in writing to an
incorporated management
committee permit an amendment
to the constitution of the
committee to take effect
after he has objected to the
amendment under section
40AW(3A);".

28 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

29 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

30 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

30(b) In the proposed section 83(1AA), by deleting
"Director" where it twice appears and
substituting "Permanent Secretary".

31(b) By deleting the proposed section 84(4) and
substituting -

"(4) The Permanent Secretary may waive -
(a) by circular issued to schools

generally or a particular type of schools, wholly or partly the requirement of any regulation in respect of a particular type of schools or teachers;

- (b) on application by a supervisor or incorporated management committee of a school and by notice in writing to the applicant, wholly or partly the requirement of any regulation in respect of the school, the applicant or a particular teacher of the school; and

- (c) on application by a teacher and by notice in writing to the applicant, wholly or partly the requirement of any regulation in respect of the applicant,

on such conditions, if any, as he thinks fit.”.

32(b) By deleting subparagraph (iii) and substituting -

“(iii) in paragraph (b), by adding
“without IMC” after “school”;

- (iv) in paragraph (i), by repealing “a supervisor or any other manager of a school” and substituting “the supervisor or a manager of a

school without IMC";".

32(c) By deleting the paragraph and substituting -

"(c) in subsection (3) -

- (i) in paragraph (a), by adding
"without IMC" after "school";
- (ii) by repealing paragraph (d);
- (iii) in paragraph (n), by adding
"without IMC" after
"school";".

32(d) By deleting the paragraph and substituting -

"(d) by adding -

"(6) If -

- (a) an IMC school is operated,
with the consent or
connivance of any manager of
the school, in contravention
of section 19(1); or
- (b) an incorporated management
committee, with the consent
or connivance of any manager
of the school concerned -
 - (i) fails to comply
with any notice
served on it under
section 82; or
 - (ii) in or in connection
with any

application under
this Ordinance
makes any statement
or furnishes any
information which
is false in any
material particular
and which it knows
or reasonably ought
to know is false in
such particular,
the manager shall be guilty of an offence
and shall be liable on conviction to a fine
of \$250,000 and to imprisonment for 2 years.

(7) If -

- (a) an IMC school is operated,
with the consent or
connivance of any manager of
the school, in any name other
than its registered name;
- (b) an incorporated management
committee, with the consent
or connivance of any manager
of the school concerned,
employs or permits any person
to teach in a school in
contravention of section
42(1) or (2); or
- (c) an IMC school contravenes

section 86 with the consent
or connivance of any manager
of the school,

the manager commits an offence and shall be
liable on conviction to a fine at level 5
and to imprisonment for 2 years.

(8) If an incorporated management
committee contravenes section 74(2A) or (2B)
with the consent or connivance of any
manager of the school concerned, the manager
commits an offence and shall be liable on
conviction to a fine at level 3 and to
imprisonment for 3 months."."

32 By deleting paragraph (e).

33 (a) In the heading, by deleting "1 and 2".

(b) In the proposed Schedule 1, in section 2(c),
by adding "management" after "incorporated".

(c) In the proposed Schedule 1, by adding -

**"2A. Continuance of certain
contracts**

(1) This section applies to a
contract that is -

(a) entered into by the
supervisor, principal or
sponsoring body or a
manager of a school
("original party") with

a person before 1
January 2005;

(b) entered into for the
supply of goods or
service by the person
for the benefit of the
school (but not any
other school); and

(c) is subsisting
immediately before the
transition date.

(2) Upon the commencement of the
transition date –

(a) (if the money paid in
consideration of the
goods or service is
provided by the
Government) the
transferee shall, with
the consent of the
person, for all purposes
substitute for the
original party as the
party to the contract,
and shall be regarded as
having always been the
party;

(b) (if the money paid in
consideration of the

goods or service is not provided by the Government) the sponsoring body or, where the sponsoring body so decides, the transferee shall, with the consent of the person, for all purposes substitute for the original party as the party to the contract, and shall be regarded as having always been the party.

(3) Where a substitution takes place under subsection (2) -

- (a) all rights and liabilities of the original party under the contract shall vest in the transferee or sponsoring body, as may be appropriate; and
- (b) the original party shall cease to be a party to the contract."

(d) In the proposed Schedule 1, in section 3(1), by adding "management" after "incorporated".

- (e) In the proposed Schedule 1, in section 4(1), by deleting "relating to the management of the school" and substituting "that are relevant to the functions and powers of the transferee".
- (f) In the proposed Schedule 2, by deleting everything before section 2 and substituting -

"SCHEDULE 2 [ss. 40BQ & 40CB]

1. **Interpretation**

In this Schedule -

- (a) where this Schedule applies under section 40BQ -

- (i) "transferor" means the school management company of the relevant school;
- (ii) "transferee" means the incorporated management committee of the relevant school;
- (iii) "transition date" means the date on which the incorporated

management
committee of the
relevant school is
established;

(b) where this Schedule applies
under section 40CB -

(i) "transferor" means
the incorporated
management
committee of the
relevant school;

(ii) "transferee" means
the school
management company
of the relevant
school;

(iii) "transition date"
means the date on
which the
incorporated
management
committee of the
relevant school is
dissolved."

(g) In the proposed Schedule 2, in section 2(7),
by deleting everything after "Land" and
substituting -

"Registry -

(a) where this Schedule applies under section 40BQ, a copy of the certificate of incorporation issued to it under section 40BM(1) or 40BX(1) of this Ordinance; or

(b) where this Schedule applies under section 40CB -

(i) a copy of the certificate of incorporation issued to it under the Companies Ordinance (Cap. 32);

(ii) a copy of the approval granted in respect of the school under section 40CB; and

(iii) a copy of the text of

section 40CB

and this

Schedule.”.

- (h) In the proposed Schedule 2, in section 3(2), by deleting “incorporated management committee” and substituting “transferee”.
- (i) In the proposed Schedule 2, in section 9(1), by adding “in the control or possession of the transferor” after “school”.
- (j) By adding -

“SCHEDULE 3 [ss. 40AB &
40ABA]

SPECIFIED SCHOOLS

School Name	School Address
Confucius Hall Middle School	77 Caroline Hill Road, Hong Kong
Fung Kai No. 2 Secondary School	15 Jockey Club Road, Sheung Shui, New Territories
Hong Kong Sam Yuk Secondary School	17A Ventriss Road, Hong Kong
International Christian Quality Music Secondary and	372 Shun Ning Road, Sham Shui Po, Kowloon

Primary School

ISF Academy	373 Queen's Road East, Wanchai, Hong Kong
Kowloon Sam Yuk Secondary School	52 Boundary Street, Mongkok, Kowloon
Mu Kuang English School	55 Kung Lok Road, Kwun Tong, Kowloon
Phoenix International School	5 Tonkin Street, Shamshuipo, Kowloon
Po Leung Kuk Choi Kai Yau School	6 Caldecott Road, Shamshuipo, Kowloon
Sam Yuk Middle School	1111 Clear Water Bay Road, Sai Kung, New Territories
S.K.H. All Saints' Middle School	11 Pak Po Street, Kowloon
Tai Po Sam Yuk Secondary School	2 Tai Po Tau Drive, Tai Po, New

Territories

United Christian 9 & 11 Tong Yam
College Street, Tai Hang
 Tung, Shamshuipo,
 Kowloon".

New

By adding -

"34A. Approval for roof playgrounds

Regulation 16 is amended by repealing
", verandah".

34B. Structural requirements

Regulation 17(2) is amended by
repealing ", verandah".

**34C. Pupils using roof playgrounds
to be under supervision**

Regulation 18 is amended by repealing
", verandah".

**34D. Numbers of pupils allowed on
a roof playground or balcony**

Regulation 19 is amended -

- (a) by repealing paragraph (2);
- (b) in paragraph (3), by
repealing ", verandah".

**34E. Limitation of activities on
roof playgrounds**

Regulation 20 is amended by repealing
“, verandah”.”.

35

By deleting the clause and substituting -

“35. Safety precautions

Regulation 21(2) is repealed and the
following substituted -

“(2) The principal and (in
the case of a school without IMC)
supervisor shall ensure that no
instruction is given in the use of
tools or the operation of machines
or in science experiments except
by -

- (a) a responsible
teacher;
- (b) (in the case of
tools or machines)
a workshop
instructor employed
in the school to
assist a
responsible
teacher; or
- (c) (in the case of
science

experiments) a
laboratory
technician employed
in the school to
assist a
responsible
teacher."."

New

By adding -

"36A. Refreshment places

Regulation 47 is amended by repealing
"shop" and substituting "tuckshop".

36B. Sanitary condition

Regulation 48(2) is repealed."

37(b)

In the proposed regulation 61(3), by deleting
"Director" and substituting "Permanent
Secretary".

New

By adding -

"37A. Formal receipts

Regulation 63 is amended by adding "of
a school without IMC" before "shall be"."

38

By deleting the clause and substituting -

**"38. Prohibition of collections without
permission of Permanent Secretary**

Regulation 66 is amended by adding
before paragraph (1) -

"(1A) This regulation does not
apply to an IMC school."."

40 By deleting the clause.

41 By deleting everything after "Regulation" and
substituting "75(1) is amended by repealing ",
require the managers of any" and substituting "of
a school without IMC, require the managers of
the"."

42 In the proposed regulation 75A -

- (a) in paragraph (1), by deleting
"Director" and substituting "Permanent
Secretary";
- (b) in paragraph (2), by deleting "Director
may" and substituting "Permanent
Secretary may";
- (c) in paragraph (2)(c), by deleting "to
the Director under section 40AV of the
Ordinance for" and substituting "and
issuing a notice under section 40AV of
the Ordinance as regards";
- (d) in paragraph (2)(d), by deleting
"chairperson, the secretary and the
treasurer" and substituting "supervisor

of the school and the secretary and treasurer of the committee”;

- (e) in paragraph (2)(e), by deleting “duties of the chairperson, the secretary and the treasurer” and substituting “functions of the supervisor of the school and the secretary and treasurer of the committee”;
- (f) in paragraph (2)(g), by deleting everything after “for” and substituting “the selection of the principal;”.

44

By deleting the clause and substituting -

“44. Regulation substituted

Regulation 76 is repealed and the following substituted -

“76. Teachers’ appointment or dismissal needs approval by managers

(1) The appointment of any teacher who is to be employed in the school -

- (a) to occupy a teacher post in the establishment of staff provided for in the code of aid for primary

schools, code of
aid for secondary
schools or code of
aid for special
schools; or

(b) for a term for not
less than 6 months,
shall be approved by the majority
of the managers of the school.

(2) The dismissal of any
teacher who is employed in the
school -

(a) to occupy a teacher
post in the
establishment of
staff provided for
in the code of aid
for primary
schools, code of
aid for secondary
schools or code of
aid for special
schools; or

(b) for a term for not
less than 6 months,
shall be approved by the majority
of the managers of the school at a
meeting of the management

committee or incorporated
management committee (as may be
appropriate).".".

45

- (a) In the heading, by deleting "**Director**" and substituting "**Permanent Secretary**".
- (b) By deleting everything after "repealing" and substituting "everything from "The" to "thereupon" and substituting "The Permanent Secretary may by notice in writing to the management authority forbid the granting of a holiday on any specified day. The management authority and the principal shall upon such notice".".

New

By adding -

"46A. Regulation substituted

Regulation 85 is repealed and the
following substituted -

**"85. Specifications for
exit door**

Any exit door of the premises
of any school must be capable of
being opened from inside without
using a key when any pupil who
does not reside in the school
premises is in the school
premises.".

46B. Size of classes

Regulation 88(c) is amended by adding
“(other than an IMC school)” after “course”.

46C. Hours of instruction

Regulation 89 is repealed.”.

47 In the heading, by deleting “**Director**” and
substituting “**Permanent Secretary**”.

New By adding -

“47A. Regulation substituted

Regulation 93 is repealed and the
following substituted -

**“93. Restriction on training
for teachers**

Unless permitted by the
Permanent Secretary, no school
shall provide any course of
training the completion of which
qualifies the participant for
being registered as a registered
teacher.”.

47B. Non-resident pupils

Regulation 95 is repealed.”.

48 By deleting everything after "Regulation" and substituting "96(1) is amended by repealing "supervisor and".".

New By adding -

"48A. Expelled pupil not to enter school premises without permission

Regulation 97 is amended -

- (a) in paragraph (1), by repealing "Permanent Secretary" and substituting "management authority of the school";
- (b) by repealing paragraph (2).".

49 By deleting the clause and substituting -

"49. Business or trading operation

Regulation 99A(4) is amended, in the definition of "school in receipt of public funds", in paragraph (a), by adding "which is a school without IMC" after "school".".

New By adding -

"49A. Regulation added

The following is added -

"99B. Restriction on use of profits arising from business or trading arrangement by incorporated management

committee

(1) This regulation applies to an IMC school.

(2) The incorporated management committee of a school shall not, without the prior permission in writing by the Permanent Secretary, apply any profits or net income arising from –

(a) any business or trading undertaking operated by or with the permission of the committee on the school premises; or

(b) any business or trading arrangement entered into by the committee, directly or indirectly, with any person for the supply of food, drinks, books, stationery, uniforms or any other thing that is required by the school to be possessed or used by its pupils,

for any purpose not directly benefiting the pupils of the school.”.”.

50

By deleting the clause and substituting -

"50. Offences

Regulation 101 is amended -

(a) in paragraph (1)-

(i) by repealing "19(1) or
(2),";

(ii) by repealing ", 89(1)";

(b) by repealing paragraphs (2), (3),
(4), (5), (6), (6A), (7) and (8)
and substituting -

"(2) Any manager of a school
without IMC who contravenes
regulation 61, 63 or 66(2) shall
be guilty of an offence.

(2A) Any manager of an IMC
school who contravenes regulation
61 shall be guilty of an offence.

(3) If regulation 10, 22,
37, 62, 65, 84(1) or (2) or 93 is
contravened in respect of a school
without IMC, the managers of the
school shall each be guilty of an
offence.

(3A) If regulation 10, 22, 37,
84(1) or (2) or 93 is contravened
in respect of an IMC school with
the consent or connivance of any
manager of the school, the manager

shall be guilty of an offence.

(4) The supervisor of a school without IMC who contravenes regulation 21(1) or (2), 53(1), 61, 63, 64, 77, 79, 81, 82, 83(1) or (3), 92(2) or (12) or 99A(2) shall be guilty of an offence.

(4A) If an incorporated management committee contravenes regulation 53(1), 61, 64, 77 or 99B(2) with the consent or connivance of any manager of the school, the manager shall be guilty of an offence.

(5) The principal of a school without IMC who contravenes regulation 21(2), 32, 38, 39(1), 52(1), 53(2) or 83(2) or (3) shall be guilty of an offence.

(5A) The principal of an IMC school who contravenes regulation 21(1) or (2), 32, 38, 39(1), 52(1) or 53(2) shall be guilty of an offence.

(5B) If regulation 92(9) is contravened in respect of any school, the principal of the school shall be guilty of an

offence.

(6) If regulation 16, 31, 34(2), 46A, 67, 80, 85, 87(2), 88, 89A, 90 or 92(4) or (9) is contravened in respect of a school without IMC, the supervisor and principal of the school shall each be guilty of an offence.

(6AA) If regulation 16, 31, 34(2), 85, 87(2) or 92(4) or (9) is contravened in respect of an IMC school, the principal of the school shall be guilty of an offence.

(6A) Any supervisor or manager who contravenes regulation 99A(1) or (3) shall be guilty of an offence.

(6B) If the management committee of a school without IMC contravenes regulation 99A(1) or (3), the managers of the school shall each be guilty of an offence.

(7) Any teacher who contravenes regulation 33, 58, 61, 63 or 66(2) shall be guilty of an offence."

- (c) by repealing paragraph (9) and substituting -

"(9) If a person is charged with an offence under paragraph (6B), it shall be a defence to the charge if he proves that-

- (a) the other members of the management committee concerned contravened regulation 99A(1) or (3) without his knowledge or consent; or

- (b) he took all reasonable steps to prevent the other members of the management committee from contravening the

regulation."."

51

By deleting everything after "by" and substituting "repealing everything before "by virtue" and substituting -

"(2) A person who is guilty of an offence under regulation 101(6) or (6AA)".

New

By adding -

"Societies Ordinance

58. Persons to which the Ordinance does not apply

The Schedule to the Societies Ordinance (Cap. 151) is amended by adding -

"(4A) Any incorporated management committee as defined in section 3(1) of the Education Ordinance (Cap. 279)".

Schedule 1

- (a) Under the heading "Education Ordinance (Cap. 279)", by deleting "and (2)".
- (b) Under the heading "Education Regulations (Cap. 279 sub. leg.)" -
 - (i) by deleting "48(2),";
 - (ii) by deleting "63,";
 - (iii) by deleting "94, 98(2) and 99A(2)" and substituting "94 and 98(2)".

Schedule 3 By deleting "Sections 3(1) (definition of
"supervisor"), 8(1)(d)(i)" and substituting
"Sections 8(1)(d)(i)".

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Honourable Emily LAU Wai-hing, J.P.

ClauseAmendment Proposed

8

By deleting paragraph (b) and substituting—

“(b) in paragraph (e), by repealing “the management committee is not managing the school satisfactorily, or that the education of the pupils is not being promoted in a proper manner;” and substituting “there is a serious problem with or crisis in school management, which leads to chaos in school administration and makes the school unable to operate properly;”.

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Honourable Emily LAU Wai-hing, J.P.

ClauseAmendment Proposed

30

By deleting the clause and substituting—

**“30. Powers of Permanent Secretary to close school or give directions
in cases of danger or misconduct**

Section 83(1)(b) is repealed and the following substituted—

“(b) the conduct of the managers, teachers or pupils of a school causes or has caused a serious problem with or crisis in school management which leads or has led to chaos in school administration and makes or has made the school unable to operate properly; or”.”.

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGEAmendments to be moved by the Honourable Cyd HO Sau-lanClauseAmendment Proposed

12(b)

By adding -

"(1B) Subsection (1)(b) does not apply to -

- (a) parent managers or alternate parent managers who are nominated for registration under section 40AM and who have been elected for that purpose; or
- (b) alumni managers who are nominated for registration under section 40AN and who have been elected for that purpose."

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd HO Sau-lan

<u>Clause</u>	<u>Amendment Proposed</u>
17	By deleting the proposed section 40BR,
26(c)	By deleting - "Section 40BR(1)(c)(i). Manager concerned. Section 40BR(1)(c)(ii) or (d). Sponsoring body."

EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Honourable Cyd HO Sau-lanClauseAmendment Proposed

47

By deleting the clause and substituting -

"47. Syllabus and time-table subject to approval of Permanent Secretary

Regulation 92 is amended -

(a) in paragraph (8), by repealing "the supervisor and to";

(b) by adding -

"(8A) In determining whether to give a direction in writing under paragraph (8) as to a syllabus of instruction or any other document, the Permanent Secretary shall have regard to -

(a) any material which is indecent, obscene, or of bad taste which is not ordinarily acceptable to a reasonable man;

(b) any material which is likely to encourage hatred against or fear of, or considered to be denigrating or insulting to any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, social status, or physical or mental disability; or

(c) anything which is in contravention of the law."."