

立法會
Legislative Council

LC Paper No. CB(2)614/07-08
(These minutes have been seen by
the Administration and
The English Schools Foundation)

Ref : CB2/BC/9/06

**Bills Committee on
The English Schools Foundation (Amendment) Bill 2007**

**Minutes of the fourth meeting
held on Saturday, 1 December 2007, at 9:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Dr Hon YEUNG Sum, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon TAM Heung-man
- Member absent** : Hon Albert Jinghan CHENG, JP
- Public Officer attending** : Item II
Ms Mable CHAN
Principal Assistant Secretary (Infrastructure and
Research Support), Education Bureau
- Attendance by invitation** : Item II
The English Schools Foundation
Professor Felice LIEH MAK
Chairman

Mr Chris Erving
Vice-Chairman

Mrs Heather Du Quesnay
Chief Executive

Mr Jonothan Abbott
Barrister and Legislative Drafting Consultant

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Stanley MA
Senior Council Secretary (2)6

Miss Carmen HO
Legislative Assistant (2)6

Action

I. Confirmation of minutes
[LC Paper No. CB(2)431/07-08]

The minutes of the meeting held on 5 November 2007 were confirmed.

II. Meeting with the Administration and The English Schools Foundation

[LC Paper Nos. CB(2)2797/06-07(01), CB(2)235/07-08(01) - (02),
CB(2)425/07-08(01), CB(2)430/07-08(01)(revised),
CB(2)430/07-08(02), CB(2)460/07-08(01) - (02) and LS10/07-08]

2. The Bills Committee deliberated (index of proceedings at **Annex**).

The Administration's stance on the Bill

3. Principal Assistant Secretary (Infrastructure and Research Support), Education Bureau said that the Administration welcomed the Bill which was introduced in response to the recommendations of Report No. 43 of the Director of Audit and the Report of the Public Accounts Committee to reform the governance structure of the English Schools Foundation (ESF). The

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Administration supported in general the objective of the Bill to improve the governance of ESF which would be conducive to its provision of quality education.

Objects and powers of ESF

4. Dr Fernando CHEUNG referred to Ms Audrey EU's suggestions made at the last meeting and asked whether ESF would consider replacing the word "Objects" with "Objectives" for the proposed section 4(1), or revising the provision to read *"The objects of the Foundation are (a) to own, manage, administer and operate within Hong Kong or elsewhere schools offering a modern liberal education through the medium of the English language to boys and girls who are able to benefit from such an education, aiming to do so without regard to race, religion or disability."* Dr CHEUNG considered that the suggestions would address ESF's concern about the imposition of a statutory duty. Senior Assistant Legal Adviser 2 said that it might also be considered whether the word "objects" could be replaced by "mission" in the proposed section 4(1) as ESF had already had a mission statement which made reference to children with Special Educational Needs (SEN). The proposed revised provision might also have to be made separate from the existing clause referring to race and religion if the intention merely related to disability.

5. Mr Chris Erving responded that irrespective of whether the word "objects", or "objectives", or "aim", or "mission" was used, adding the phrase "without regard to disability" in the proposed section 4(1) would expose ESF to risk of legal action. ESF did not see the advantage or the need for including such a phrase in the Bill. He added that including the reference to children with SEN in ESF's mission statement would not expose it to legal challenge.

6. Professor LIEH MAK supplemented that ESF and its schools would continue to comply with the requirements of the Education Ordinance and the Disability Discrimination Ordinance. There was no need to add "without regard to disability" in the proposed section 4(1) as such inclusion would impose a statutory duty on ESF and give rise to possible judicial review concerning ESF's decisions on matters relating to the provision of education for students with disabilities. She pointed out that ESF had incurred \$5 million and had consumed considerable time in the last judicial review. ESF wished to avoid exposing itself to possible risk of legal action.

Composition of the Board of Governors (the Board)

7. Mr Tommy CHEUNG briefed members on his revised Committee Stage amendment (CSA) concerning the composition of the Board. He explained that the revised CSA was different from the previous one in two aspects. First, the proposed Government representation in the Board was taken out as the Administration considered that it should not micro-manage individual schools

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and seek representation on the boards of school sponsoring bodies except for Government schools. Second, the parent representative of students with SEN in the Board should be elected from among all parents of students of ESF schools, so that all parents would have the same number of votes concerning the election of their representatives on the Board. Mr CHEUNG also said that the present drafting of the revised CSA would be refined to make it clear that the representative of parents of students with SEN must be a parent having a SEN student.

8. Mr Abraham SHEK and Dr Fernando CHEUNG expressed support for the CSA. Mr Abraham SHEK said that Mr Albert CHENG had also indicated support for the CSA and would withdraw his proposed CSA.

9. Senior Assistant Legal Adviser 2 drew members' attention to proposed section 17 in clause 8 of the Bill which provided that a person elected from among a group of eligible persons to be a member of the Board was appointed on a personal basis and not as the delegate of the group of eligible persons, and the transitional arrangements concerning the Board in the Schedule to the Bill. He said that members and ESF might need to consider the impact of Mr Tommy CHEUNG's revised CSA on these provisions.

10. Mr Jonothan Abbott confirmed that as drafted in the Bill, members of the Board, although elected from among different groups of eligible persons, were not representatives of the constituencies concerned. He considered that the same principle should apply to the parent with a SEN student elected from among all parents. He would draw members' attention to the need for consequential amendments, if any, as a result of Mr Tommy CHEUNG's revised CSA, in the examination of the Bill clause-by-clause.

11. Professor LIEH MAK said that ESF accepted the revised CSA proposed by Mr Tommy CHEUNG who had taken aboard ESF's suggestion that the SEN parent representative should be elected from among all parents. She reiterated that parents would prefer to have LegCo representation on the Board but ESF respected the view of members. To maintain the balanced composition of the Board, ESF suggested that an additional member elected from among the chairmen of School Councils be included in the Board, i.e from three to four members.

12. Mrs Heather Du Quesnay explained that with the revised CSA, there would be eight parents on the Board. Together with the four staff members, they would make up 12 members out of 25 voting members. As parents were inclined to side with staff members on matters affecting the latter's interests, the inclusion of an additional independent member with management background would help the Board to make decisions on such matters.

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13. Mr Tommy CHEUNG said that he and Mr Abraham SHEK did not support the suggestion to increase the number of chairmen of School Councils in the Board. He stressed that ESF had been under the wrong impression that LegCo Members sitting on the Board sided with the ESF management, and with the removal of LegCo representation on the Board, ESF therefore considered it necessary to increase the number of Board members who would stand on the side of the ESF management. The Chairman said that teachers and parents often held different views on issues concerning school administration and management. Mr Tommy CHEUNG expressed a similar view.

14. Ms Emily LAU did not support the ESF's proposal. She considered that if the intention was to maintain the balanced composition of the Board, ESF should consider increasing an additional independent member nominated by the Nominating Committee, instead of increasing the number of chairmen of School Councils. She added that that did not mean she was proposing ESF to do so. She considered that ESF membership was already too large compared with the universities.

Election of parent representatives on the Board

15. In response to members' concern about the procedure for the election of parent representatives on the Board, Professor LIEH MAK said that ESF would make reference to the procedure for the election of members to the Medical Council of Hong Kong. Parent representatives would be elected by secret ballot. Ballot papers with serial numbers would be sent to parents of students of ESF schools by post, and voters would send back their ballots by post. ESF would appoint an independent person to supervise the counting of ballots.

16. Members made the following views concerning the election of parent representatives:

- (a) an open, fair and transparent mechanism for the election of parent representatives on the Board should be established;
- (b) a mechanism to handle complaints on election matters was necessary;
- (c) the stakeholders should be consulted on the election procedure; and
- (d) ESF should review the election procedure after the completion of the first election exercise.

17. Professor LIEH MAK noted members' views and agreed to provide a paper to explain the procedure and arrangements for the election of parent representatives on the Board.

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Composition of School Councils

18. Dr Fernando CHEUNG informed members that he would not move a CSA to include a parent representative of students with SEN in each School Council.

III. Clause-by-clause examination of the Bill

[LC Paper Nos. CB(3)583/06-07, CB(2)2324/06-07(01),
CB(2)204/07-08(02) and CB(2)450/07-08(01)]

19. The Chairman suggested commencing clause-by-clause examination of the Bill at the next meeting. Members agreed.

IV. Any other business

Date of next meeting

20. Members agreed to hold the next meeting on Monday, 17 December 2007 at 10:45 am.

21. There being no other business, the meeting ended at 10:56 am.

Council Business Division 2
Legislative Council Secretariat
14 December 2007

**Proceedings of the fourth meeting of Bills Committee on
The English Schools Foundation (Amendment) Bill 2007
on Saturday, 1 December 2007, at 9:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000219	Chairman	Confirmation of minutes	
000220 - 000350	Chairman	Welcome to representatives of the Administration (the Admin) and the English Schools Foundation (ESF).	
000351 - 000743	Chairman Admin	PAS(I&RS)'s indication that the Admin supported the Bill.	
000744 - 001256	Chairman Mr Tommy CHEUNG	Mr CHEUNG's briefing on his revised Committee Stage amendment (CSA), highlighting the non-inclusion of a representative from the Education Bureau (EDB) in the Board of Governors (the Board), and the election of a representative from parents of students with special educational needs (SEN) from among all parents.	
001257 - 001356	Mr Abraham SHEK Chairman	Mr SHEK's expression of support for Mr Tommy CHEUNG's revised CSA.	
001357 - 001756	Dr Fernando CHEUNG Chairman Chairman of ESF)	Dr CHEUNG's expression of support for Mr Tommy CHEUNG's revised CSA, and his enquiry about the method for election of the parent representatives on the Board. Chairman of ESF's explanation on the arrangements for election of parent representatives by secret ballot. Chairman's request for a paper on the procedure and arrangements for the election of parent representatives on the Board. Chairman of ESF's agreement to provide a written response.	See para 17 of the minutes
001757 - 002953	Ms Emily LAU Chairman Chairman of ESF Mr Abraham SHEK Miss TAM Heung-man	Ms LAU's concern about the confidentiality of parents' identity if the ballot papers would be marked with a serial number. Her emphasis on the need for a mechanism for ensuring the ballot be conducted in an open, fair and transparent manner. Chairman of ESF's elaboration of the election procedure including the sending of the ballot papers to parents by post, and the appointment of	

Time marker	Speaker	Subjects	Action required
		<p>independent persons to supervise counting of the ballots returned.</p> <p>The Chairman and Ms LAU's expression of need for the establishment of an appeal mechanism to handle complaints about election matters.</p> <p>Miss TAM's suggestion on the need to consult parents on the proposed election procedure and review these procedure after the first election exercise.</p> <p>Chairman of ESF noted members' views and suggestions.</p>	
002954 - 003730	<p>SALA2 Chairman Mr Abraham SHEK Chairman of ESF Mr Jonothan Abbott</p>	<p>SALA2 drew members' attention to the proposed section 17 which provided that members of the Board should be nominated, elected or appointed on a personal basis and the transitional arrangements for the Board provided in the Schedule to the Bill.</p> <p>Mr SHEK's view that it was a common arrangement that a representative elected from a group should act on a personal basis and not represent the views and interests of the group.</p> <p>Chairman of ESF and Mr Abbott's response that the Bill was drafted in such a way that members of the Board and other committees were nominated, elected or appointed on a personal basis, and not as a representative of the constituency concerned.</p> <p>Mr Abbott's advice that consequential amendments might be necessary as a result of Mr Tommy CHEUNG's CSA.</p> <p>The Chairman's advice that ESF should explain the necessary amendments during the clause-by-clause examination of the Bill.</p>	
003731 - 004152	<p>Dr Fernando CHEUNG Chairman Mr Tommy CHEUNG</p>	<p>Dr CHEUNG's expression of concern about the definition of SEN in Mr Tommy CHEUNG's CSA, and his preference for the definition of SEN adopted by EDB to that in the Disability Discrimination Ordinance (DDO).</p> <p>Mt Tommy CHEUNG's response that he would follow up with members and ESF on the definition of SEN and the drafting of the CSA.</p>	

Time marker	Speaker	Subjects	Action required
004153 - 010440	Chairman Chairman of ESF Ms Emily LAU Chief Executive of ESF SALA2 Mr Tommy CHEUNG Dr Fernando CHEUNG	<p>Chairman of ESF's indication of acceptance of Mr Tommy CHEUNG's revised CSA.</p> <p>Chairman of ESF's explanation for ESF's proposal to increase the number of chairmen of School Councils from three to four in the Board. ESF considered it necessary to maintain a sufficient number of independent members and members with management background to facilitate the making of decisions on matters relating to staff interests.</p> <p>SALA2's explanations on the interpretation of "independent members" and "external members" under clause 4 of the Bill.</p> <p>Chief Executive of ESF's explanation of the interpretation of "independent members" and "external members" in the context of the Bill, highlighting that external members included "independent members", chairmen of School Councils and parents who were not staff of ESF.</p> <p>Mr Tommy CHEUNG's view that LegCo Members did not necessarily stand on the side of the ESF management.</p> <p>The Chairman's remark that teachers and parents often held different views on school management matters. Mr Tommy CHEUNG expressed a similar view.</p> <p>Dr Fernando CHEUNG's remark that the Board member elected from principals of ESF schools would probably side with the ESF management.</p> <p>Chief Executive of ESF's emphasis that ESF wished to have more independent members on the Board to facilitate decision making on difficult policy issues.</p>	
010441 - 010733	Chairman Mr Tommy CHEUNG Ms Emily LAU	Date of next meeting	
010734 - 011655	Dr Fernando CHEUNG Chairman SALA2 Chairman of ESF Vice-Chairman of ESF	<p>Dr CHEUNG informed members the withdrawal of his proposal to add a parent representative of students with SEN in each School Council.</p> <p>Dr CHEUNG's enquiry on ESF's stance on Ms Audrey EU's suggestion to redraft proposed section 4(1) to put beyond doubt the intention not to impose a statutory duty on ESF. SALA2's advice that Ms EU's suggestion had impact on the</p>	

Time marker	Speaker	Subjects	Action required
		<p>original object of ESF to provide liberal education without regard to race or religion.</p> <p>Mr Erving's view that the proposed inclusion of the phrase "without regard to disability" in section 4(1) would expose ESF to risk of legal action. ESF saw no advantage or need to take the risk.</p> <p>SALA2's suggestion that ESF might consider redrafting section 4(1) to reflect its mission to provide education for students with SEN.</p> <p>Chairman of ESF's response that the proposal would impose a legal obligation on ESF and would expose ESF to the risk of legal action. ESF had incurred \$5 million and had consumed considerable time in the last judicial review. ESF should focus its effort on providing education.</p>	
011656 - 011927	Ms Emily LAU Chairman of ESF Chairman	<p>Ms LAU's enquiry as to why ESF accepted the provision of education without regard to "race or religion" but not "disability".</p> <p>Chairman of ESF's response that like all other sponsors and schools in Hong Kong, ESF and its schools were already subject to the Education Ordinance and DDO, and DDO had provisions about discrimination against disabilities.</p> <p>Chairman's remark that the Race Discrimination Bill, if enacted, might have implications on schools about student admission matters.</p>	
011928 - 012124	Dr Fernando CHEUNG Chairman Vice-Chairman of ESF	<p>Mr Erving's response to Dr Fernando CHEUNG's enquiry that adoption of words like "objects", "objectives", "mission" or "aim" in section 4(1) would put ESF at risk of being challenged in court.</p> <p>The Chairman's remark that ESF might consider refining its mission statement to reflect its intent to improve quality of education for students with SEN.</p>	
012125 - 012454	Ms Emily LAU Chairman Chairman of ESF Chief Executive of ESF	<p>Chief Executive of ESF's explanation in response to Ms LAU's enquiry that chairmen of School Councils were independent of the schools they came from and whether principals would have the same stance as the management would depend on the issues concerned.</p> <p>Ms LAU's expression of objection to ESF's proposal to increase the number of chairmen of School Councils.</p>	

Time marker	Speaker	Subjects	Action required
012455 - 012535	Chairman	Date of next meeting	

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