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Panel on Education

Background brief prepared by the Legislative Council Secretariat for the special meeting on 30 March 2009

School-based management policy

Purpose

This paper set outs the background to the introduction of the school-based management (SBM) policy and summarizes the concerns of members on the subject.

Background

2. In 1991, the then Education Department introduced the School Management Initiative Scheme for enhancing the effectiveness of schools. In its Report No. 7 on Quality Education issued in 1997, the Education Commission formulated recommendations to improve school management and performance for the provision of quality school education. One of the recommendations was for schools to practise SBM to develop their own ways of meeting the needs of students and enhancing learning outcomes.

3. SBM is the decentralization of decision-making from the Education Bureau (EDB) to schools regarding personnel procedures, financial matters and the design and delivery of curriculum. To take forward SBM, the Education Ordinance (Cap. 279) was amended in July 2004, and the Education (Amendment) Ordinance 2004 came into operation on 1 January 2005. The Amendment Ordinance requires all aided schools to establish an incorporated management committee (IMC) to manage the school. School sponsoring bodies (SSBs) have to submit to the Permanent Secretary for Education by 1 July 2009 a draft IMC constitution and a list of proposed managers of the school for the purpose of establishing the IMC before 1 January 2010. IMC shall consist of key stakeholders including representatives of SSBs, principals, teachers, parents, alumni and independent members of the community. The Amendment Ordinance also provides that the Legislative Council (LegCo) may by a resolution passed before 1 July 2009 extend the deadline for the submission of draft constitutions to a date after 1 July 2009 but

before 2 July 2011.

4. In May 2005, the Administration proposed to provide schools which had established IMCs (IMC schools) more financial autonomy and flexibility over the use of resources by expanding the Operating Expenses Block Grants (OEBG). It also proposed the provision of time-limited support to help schools in establishing IMCs and familiarizing with their operation.

Deliberations of the Panel

5. The Panel on Education held two meetings to discuss and receive views of deputations on the Administration's financial proposals. The issues of concern raised by members are summarized below.

Provision of time-limited cash grants

6. In general, members supported the proposals of providing more funding flexibility and support measures for schools with IMCs. Under the proposals, a time-limited cash grant of \$350,000 per school per annum would be provided to schools with their IMCs established during the period from 2005-2006 to 2008-2009. In other words, schools with IMCs established in the early years would receive more cash grants than those establishing IMCs at a later stage. There was a concern that such an arrangement might be perceived as discriminatory against the latter schools.

7. The Administration explained that it had treated all schools on an equity basis as any aided schools which submitted a draft constitution for the purpose of establishing an IMC before the statutory deadline of 1 July 2009 would be given the proposed time-limited cash grant of \$350,000 per annum in the initial years. The cash grants were intended to enable schools to acquire the necessary legal and accounting professional services, establish a system of elections, organize school-based training for school managers, and meet the necessary expenditure for the establishment and smooth operation of IMCs in the initial years. Some 1 200 aided primary and secondary schools were required to establish IMCs before 1 January 2010. As schools were encouraged to establish IMCs as early as practicable, schools with IMCs established in the early years would be requested to share their experiences and help other schools to set up IMCs. The Administration considered it reasonable to provide additional cash grants to these IMC schools to cover the manpower and other costs incurred for offering such assistance to non-IMC schools. However, given the substantial resources required, the Administration could only set aside sufficient funds for the provision of the time-limited cash grants up to the 2008-2009 school year.

8. While some members considered the proposed arrangement unfair and discriminatory against non-IMC schools, others accepted that more administrative and financial support should be provided in the establishment and initial operation

of IMCs. At its meeting on 20 June 2005, the Panel passed a motion urging the Administration to consider Mr CHEUNG Man-kwong's coordinated proposals as follows -

- (a) the Administration should offer liability insurance and legal protection for the managers of all lawful school management committees (SMCs);
- (b) the Administration should grant the right to all lawful SMCs to flexibly use the OEBG and Teacher Relief Grant;
- (c) the Administration should provide, on a reimbursement basis, a one-off cash grant of \$700,000 for two years to those schools which took the lead in establishing IMCs on a pilot basis before 2007. The Administration should conduct a review in 2007 of the schools which had established IMCs on a pilot basis by calculating the average expenses of these schools over the two years and estimating the annual recurrent expenditure of these schools after 2007; and
- (d) schools which established IMCs after 2007 but before the statutory deadline might receive a one-off average grant for two years. After two years, these IMC schools would receive an annual grant equivalent to the sum of annual recurrent expenditure for the purpose of continuing the operation of their IMCs.

9. After discussion with members, the Administration revised the proposals to provide a one-off cash grant of \$350,000 to each school that notified the Administration of its intention to set up an IMC with the submission of a draft constitution during the period of the four school years from 2005-2006 to 2008-2009. The Administration also proposed to reimburse schools for relevant expenses on a need basis (with a ceiling of \$350,000) in the school year immediately following their establishment of IMCs, so as to familiarize them with the operation of IMC, the revised accounting procedures and financial management practices as well as to enable their dissemination of good practices to other schools which had yet to set up IMCs. The proposals were approved by the Finance Committee on 8 July 2005.

Progress of establishment of IMCs

10. At the Council meeting on 22 October 2008, Members had sought information on the number of primary and secondary schools which had set up IMCs. According to the Administration, as at 20 October 2008, 374 subsidized schools under 135 SSBs had set up IMCs, constituting about 43% of the total number of subsidized schools. Sixty-one schools had submitted or undertaken to submit applications, and 436 schools had yet to make applications.

11. Since about half of the subsidized schools had not yet established IMCs,

members were concerned whether the Administration would take the initiative to move a motion or object to LegCo moving a motion to extend the deadline for the submission of draft constitutions for the establishment of IMCs to 1 July 2011, and whether more time and flexibility would be given to aided schools to implement their IMC constitutions should the deadline be extended.

12. The Administration acknowledged the need to extend the deadline given the large number of aided schools that had not yet submitted draft IMC constitutions. The Administration advised that depending on the number of aided schools that had submitted IMC constitutions by 2011, it would consider giving a reasonable period of time for them to implement their IMC constitutions. As at October 2008, the Administration considered a period of three to four years from 2011 reasonable.

Judicial review

13. Catholic Diocese of Hong Kong, a SSB, has challenged the constitutionality of the relevant sections concerning IMCs in the Education Ordinance, as added by the Amendment Ordinance. The details of the case are set out in **Appendix I**.

Relevant papers

14. A list of the relevant papers on the LegCo website is in **Appendix II**.

Catholic Diocese of Hong Kong v Secretary for Justice [2007] 4 HKLRD 483
Application for Judicial Review regarding the
School-Based Management Policy

Background

The Education (Amendment) Bill 2002 was introduced to implement the school-based management (SBM) policy. It was passed by the Legislative Council on 22 July 2004 as the Education (Amendment) Ordinance (27 of 2004) (the Amendment Ordinance) and came into operation on 1 January 2005.

2. The Amendment Ordinance, among other things,:-
 - (a) provides for the incorporation of the managers of a school as a separate legal entity known as the incorporated management committee (IMC);
 - (b) requires the establishment of an IMC in every operating aided school before 1 July 2009, and the establishment of IMC in every planned aided school before the school commences operation.
3. The Applicant, Catholic Diocese of Hong Kong, is a school sponsoring body (SSB). The Applicant challenged the constitutionality of sections 40BK (2) and (3)(a) and 40BU(2) and (3) in Part IIIB of the Education Ordinance, added by the Amendment Ordinance.

The Application for Judicial Review

4. Section 40BK(2) and (3)(a) provides, among other things, that SSB of an aided school without an IMC which has commenced operation before 1 January 2005 shall submit to the Permanent Secretary of Education a draft constitution of the proposed IMC by 1 July 2009. Section 40BK(5) provides that the Legislative Council may by a resolution passed after 1 October 2008 but before 1 July 2009 extend the deadline of submitting draft constitution from 1 July 2009 to a date after 1 July 2009 but before 2 July 2011.
5. Section 40BU(2) and (3) provides, among other things, that SSB of an aided school the scheduled opening date of which falls on or after 1 January 2005

shall submit a draft constitution of the proposed IMC to the Permanent Secretary of Education no later than 6 months before the scheduled opening date or such later date as the Permanent Secretary of Education may approve in writing.

6. The Applicant argued that the two provisions were not consistent with articles 136(1), 137(1) and 141(3) of the Basic Law. The respective articles provide that:-

- (a) the Government of HKSAR shall , on its own, formulate policies on the development and improvement of education;
- (b) educational institutions of all kinds may retain their autonomy and enjoy academic freedom. Schools run by religious organisations may continue to provide religious education, including courses in religion;
- (c) religious organisations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

7. In relation to article 136(1) of the Basic Law, the Applicant argued that the Amendment Ordinance is to implement compulsorily the policy of SBM, a "brand new regime" which pays insufficient or no regard to the previous education system. Regarding article 141(3) of the Basic Law, the Applicant argued that as a religious organisation, it has the constitutional right to continue running schools according to its "previous practice". The implementation of SBM policy forces the Applicant to run its schools under a new practice.

8. Regarding article 137(1) of the Basic Law, the Applicant argued that the compulsorily SBM policy infringe on its right, as an educational institution, to determine the governance structure of its schools and thus its right to retain its autonomy.

9. The Government opposed the application for judicial review.

The Court's Ruling

10. The Court examined the history of the implementation of SBM policy submitted by the Government and noted that the development of SBM policy dated back to 1989 and was carried out in 7 phases. The Court concluded that the

Amendment Ordinance did not introduce a brand new system nor did it depart fundamentally from the previous education system. The Court found that there is no violation of articles 136(1) and 141(3) of the Basic Law.

11. The Court further observed that article 141(3) concerned non-discrimination on account of religion by guaranteeing religious organisations the right to continue as before, to run schools according to their previous practice. The preservation of religious organisations' "previous practice" in running schools after 1 July 1997 did not give religious organisations immunity to changes of education policy.

12. In relation to article 137(1), the Court observed that the Applicant is a religious institution. Article 137(1) protects the right of an educational institution, not a religious institution. Further, the right to autonomy must be consistent with systems of public accountability, especially in respect of funding provided by the government and an appropriate balance has to be struck between institutional autonomy and accountability. Autonomy cannot be an absolute right.

13. The Court dismissed the application of judicial review by the Applicant.

Appeal

14. The Applicant seeks to appeal against the decision of the Court of First Instance. A hearing has been scheduled to be heard on 17 November 2009.

**Relevant papers on
School-based management policy**

Meeting	Date of meeting	Paper
Panel on Education	3.6.2005 (Item IV)	Minutes Agenda
Panel on Education	20.6.2005 (Item I)	Minutes Agenda
Finance Committee	8.7.2005	Minutes FCR(2005-06)27
Finance Committee	20.4.2007	Administration's replies to Members initial written questions (Reply Serial Nos. EMB089, EMB116 and EMB117)
Panel on Education	9.7.2007	Minutes
Legislative Council	22.10.2008	[Question 20] Asked by : Hon CHEUNG Man-kwong Implementation of the Education (Amendment) Ordinance 2004 Reply
Panel on Education	23.10.2008 (Policy Briefing)	Minutes Agenda