

立法會
Legislative Council

LC Paper No. CB(2)2305/03-04

(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/02

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

**Minutes of meeting
held on Wednesday, 21 April 2004 from 8:30 am to 12:50 pm
in Conference Room A of the Legislative Council Building**

**Members
present**

: Hon Cyd HO Sau-lan (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon YEUNG Yiu-chung, BBS
Hon Emily LAU Wai-hing, JP
Hon SZETO Wah
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP

**Public Officers
attending**

: Mr M Y CHENG
Deputy Secretary for Education and Manpower (3)

Mr Andrew POON
Principal Assistant Secretary for Education and
Manpower (Quality Assurance)

Mrs YU LAW Siu-man
Senior Education Officer (School Registration and
Compliance)
Education and Manpower Bureau

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and
Administration)
Department of Justice

Mr W L CHEUNG
Senior Government Counsel
Department of Justice

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

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Stanley MA
Senior Council Secretary (2)6

I. Meeting with the Administration

Members deliberated on the Administration's response to the issues raised at the meeting on 14 April 2004 [LC Paper No. CB(2)2066/03-04(01)] (Index of proceedings at **Annex**).

2. The Bills Committee requested the Administration to -
 - (a) elaborate on the requirements for the operation of aided schools and Direct Subsidy Scheme (DSS) schools under the service agreements before and after enactment of the Bill;
 - (b) describe the views of the school councils which had been consulted on the suggestion that new DSS schools commencing operation on or after the commencement of the Bill, except those that had entered into an agreement with the Administration previously, should be required to establish an Incorporated Management Committee (IMC);
 - (c) consult the relevant school councils, SSBs and organisations on whether aided schools should have the option to establish an IMC;
 - (d) examine whether SSBs, by virtue of the terms and conditions of the existing service agreements between SSBs and the Administration, could institute legal proceedings against the Administration on the mandatory requirement for aided schools to establish an IMC under the Bill;

- (e) consider whether a way out could be provided for IMC schools which had encountered difficulties in the implementation of the requirements of the Bill within the transitional period;
- (f) specify the power of a SSB to dissolve an IMC and form a new School Management Committee when an aided school with an established IMC changed to become a DSS school; and
- (g) consider incorporating a general provision to specify the power of SSB to decide on issues which fell outside the scope of the functions and powers of IMC in proposed new sections 40AD(2), 40AE(1) and (2).

Providing aided schools with the option to establish an IMC

3. Mr CHEUNG Man-kwong said that he considered it unfair to adopt different policies for aided schools and DSS schools in the establishment of an IMC, i.e., aided schools were required to establish an IMC with a transitional period of five years while DSS schools were given the option to establish an IMC or not. He suggested that the Administration should give the option to both types of schools for a period of five years after the commencement of the Bill, and review the need to amend the Education Ordinance in the light of the experience of IMC schools in operation during the period. Mr CHEUNG added that he would consider proposing a Committee Stage amendment (CSA) to the effect that all schools should have the option to establish an IMC within five years after the commencement of the Bill. Members in general agreed that the Administration should explore the feasibility of Mr CHEUNG's suggestion and provide a written response.

Admin

II. Clause-by-clause examination of the Bill
[LC Paper No. CB(2)1964/03-04(01)]

4. Members deliberated on Clause 17 of the Bill (proposed sections 40AC, 40AD, 40AE and 40AEA under Part IIIB of the Education Ordinance - index of proceedings at **Annex**).

Section 40AD - Functions of SSB and IMC

5. Mr CHEUNG Man-kwong suggested that there should be express provisions in proposed new section 40AE to reflect the power of SSBs to oversee the performance of IMCs as provided under proposed new section 40AD(1)(f). He also suggested that drafting of section 40AD(2)(f) should be refined. The Administration undertook to consider his suggestions.

Admin

Section 40AE - Powers of IMC

6. The Bills Committee requested the Administration to -
- (a) liaise with the legal profession regarding the provision of voluntary legal service to support SSBs, parent-teacher associations, alumni associations, etc., in the establishment and on-going operation of an IMC;
 - (b) provide a sample IMC constitution as soon as practicable;
 - (c) provide sample guidelines on the power of IMC to raise funds and enter into any contract, agreement or arrangement involving the use of private funds which was not provided by the Government, referred to in proposed new section 40AE(3)(ba);
 - (d) review the need for section 40AE(3)(b) which provided that the exercise of the power of an IMC shall be subject to any direction given by the Permanent Secretary for Education and Manpower (PSEM) under section 40CC, having regard to the fact that under section 82(1), PSEM might give directions to the IMC of any school for the purposes of ensuring that the school was operated satisfactorily or the education of the pupils of the school was promoted in a proper manner;
 - (e) clarify whether the directions given by PSEM under proposed new section 40AE(3)(b) would override the provisions under the Codes of Aid for aided primary, secondary and special schools in case of any inconsistency; and
 - (f) refine the drafting of section 40AE(3)(ba).

Section 40AEA - Power of a sponsoring body over employment of teaching staff

- Admin 7. Mr LEE Cheuk-yan suggested that the Administration should consider redrafting of proposed new section 40AEA to the effect that non-teaching staff would be included under the section.

Other issues

Implications of the Bill on one- line vote arrangement for aided schools

8. Mr CHEUNG Man-kwong noted the recent newspaper reports on the Administration's plan to allow schools to delink staff salaries from the civil service pay for new recruits not exceeding 20% of the approved establishment

Admin by way of a one-line vote arrangement. He requested the Administration to clarify the policy intent and the implications of the Bill on implementation of a one-line vote arrangement in the school sector.

Arrangements for merger of schools

Admin 9. Mr CHEUNG Man-kwong asked whether the Administration would consider incorporating provisions in the Bill to cater for the merger of schools in the light of its latest policy on the provision of public sector school places. The Chairman requested the Administration to examine the issue and provide a written response.

III. Any other business

Date of next meeting

10. The Chairman advised that the next meeting would be held at 8:30 am on 28 April 2004 in Conference Room A.

11. The meeting ended at 12:50 pm.

Council Business Division 2
Legislative Council Secretariat
10 May 2004

**Proceedings of the meeting of the Bills Committee on
Education (Amendment) Bill 2002
on Wednesday, 21 April 2004 from 8:30 am to 12:50 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
I Meeting with the Administration			
0000 - 0350	Chairman Admin	Introduction.	
0351 - 0940	Admin	Briefing on the Administration's paper for the meeting, i.e., LC Paper No.CB(2)2066/03-04(01).	
0941 - 3200	Chairman Mr CHEUNG Man-kwong Mr Tommy CHEUNG Admin Ms Emily LAU	<ul style="list-style-type: none"> - Whether DSS schools commencing operation after the commencement of the Bill should have the option to establish an IMC and the Administration's consultation with relevant schools councils; and - Whether aided schools should have the option to establish an IMC or not. 	See para 2(a) of the minutes

3201 - 011330	<p>Ms Emily LAU Admin Chairman Mr CHEUNG Man-kwong Mr YEUNG Yiu-chung Mr SZETO Wah</p>	<ul style="list-style-type: none"> - Scope and results of the consultation on the requirement that new DSS schools commencing operation after the commencement date should be required to establish an IMC; - Difference between aided schools and DSS schools in operation and management; - Provision of a five-year period for schools to decide whether they would establish an IMC in accordance with the Bill; and review the need to legislate for the mandatory establishment of an IMC in the light of actual experience within the five-year period; - Consultation on whether aided schools should be given the option to follow the requirements of the Bill; - Compatibility between the terms and conditions of the service agreement of existing aided schools and the requirements of the Bill; and - Any way out for schools which had encountered difficulties in operating in accordance with the requirements of the Bill within the transitional period. 	<p>See para 2(b) of the minutes</p> <p>See para 2(c) of the minutes</p> <p>See para 2(d) of the minutes</p> <p>See para 2(e) of the minutes</p>
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011331 - 012158	Mr Tommy CHEUNG Admin Chairman Mr SZETO Wah Ms Emily LAU	<ul style="list-style-type: none"> - Incorporation of a School Management Committee in a DSS school under the Company Ordinance; - Power of SSB to dissolve an IMC and form a new SMC when an aided school with an established IMC changed to become a DSS school; and - Power of SSB to decide on issues which fell outside the scope of the functions and powers of IMC in proposed new sections 40AD(2) and 40AE(1). 	<p>See para 2(f) of the minutes</p> <p>See para 2(g) of the minutes</p>
012159 - 013740	Mr CHEUNG Man-kwong Chairman Mr SZETO Wah	Suggestion on the provision of a period of five years to replace the transitional period for aided and DSS schools to establish an IMC on a voluntary basis; and review of the need to amend the Education Ordinance in the light of the experience of those schools who had established an IMC during the period.	See para 3 of the minutes
II Clause by clause examination of the Bill			
013741 - 014030	Chairman	Section 40 AC : IMC to manage school	
014031 - 015555	Chairman Mr CHEUNG Man-kwong Admin	<p>Section 40AD : Functions of SSB and IMC</p> <ul style="list-style-type: none"> - Express provisions to be added in 40AE(1) to reflect the power of SSB to oversee the performance of IMC in 40AD(1)(f); and - Refine the drafting of proposed new section 40AD(2)(f). 	<p>See para 5 of the minute</p> <p>See para 5 of the minutes</p>

015556 - 021931	Chairman Mr CHEUNG Man-kwong Admin Mr Tommy CHEUNG	Section 40AE : Powers of IMC Guidelines issued by SSB in relation to the power of IMC to raise funds and enter into any contract or agreement or arrangement.	
021932 - 023446		Break	
023447 - 025410	Chairman ALA1 Mr Tommy CHEUNG Mr LEUNG Yiu-chung	Section 40AE : Powers of IMC - Provision of legal support service to SSBs, parent-teacher associations, alumni associations, etc., in the establishment and operation of an IMC; - Provision of sample IMC constitution; and - Provision of sample guidelines on fund raising and entering into contracts, agreement or arrangements for the reference of SSBs.	See para 6(a) of the minutes See para 6(b) of the minutes See para 6(c) of the minutes
025411 - 025600	Chairman Admin	Section 40AE(2)(e) : SSB's power to regulate the power of IMC to open and operate bank accounts and invest its funds.	
025601 - 030125	Mr CHEUNG Man-kwong Admin Mr Tommy CHEUNG	Section 40AE(2)(h) Donation of property and monies to SSB or IMC;	
030126 - 030849	Mr LEE Cheuk-yan Admin Chairman	Section 40AE(2)(b) and (i) : Role and functions of SSBs in employment of non-teaching staff in IMC schools.	

030850 - 033929	Chairman Mr CHEUNG Man-kwong Admin ALA1 Mr LEE Cheuk-yan	Sections 40AE(3)(b) and 40CC : - Power of PSEM to give direction to IMC of any school for the purpose of ensuring that the school was operated satisfactorily or the education of the pupils of the school was promoted in a proper manner; and - Legal effect of the directions given by PSEM under the section and the provisions of the Codes of Aid for primary, secondary and special schools in case of any discrepancy.	See para 6(d) of the minutes See para 6(e) of the minutes
033930 - 034010	Chairman ALA1 Mr CHEUNG Man-kwong	Section 40AE(3)(ba) : Refined drafting of the section.	See para 6(f) of the minutes
034011 - 034550	Chairman Mr CHEUNG Man-kwong Admin	Section 40AE(4) : Effect of the Bill on the Administration's plan on implementation of one-line vote arrangement in the school sector.	See para 8 of the minutes
034551 -041030	Chairman Mr LEE Cheuk-yan Admin Mr Tommy CHEUNG	Section 40AEA - Power of SSB over employment of teaching staff : Inclusion of non-teaching staff under the section.	See para 7 of the minutes
041031 - 041929	Mr CHEUNG Man-kwong Chairman Admin	Merger of schools.	See para 9 of the minutes
041930 - 041948	Chairman	Date of next meeting.	