

立法會
Legislative Council

LC Paper No. CB(2)3318/03-04

(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, 30 June 2004 from 9:30 am to 11:00 am
in Conference Room A of the Legislative Council Building**

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

[LC Paper Nos. CB(2)2970/03-04(01), CB(2)2989/03-04(01) - (03)]

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

Consistency of the Bill with Article 141(3) of the Basic Law

2. Members noted that Article 141(3) of the Basic Law provided that "religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other services." Members in general expressed concern as to whether the Bill was consistent with the Article in that the Bill required aided schools run by religious bodies to establish an Incorporated Management Committee (IMC) during the transition period. They considered such mandatory requirement in contravention with the stipulation that religious bodies might continue to operate schools "according to their previous practice".

3. The Administration explained that Article 141 should be construed in the light of its context and purpose and read in conjunction with other relevant articles on education, notably Article 136 which provided as follows -

"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."

4. The Administration explained that the term "previous practice" did not prohibit the introduction of new measures by the Special Administrative Region Government to improve the pre-1997 education system as improvement to the education system was expressly mandated by Article 136. Since the Bill aimed to provide for school-based management which encouraged participatory decision-making and enhance the transparency of school management and public accountability, the Bill was an improvement to the education system and was justified under Article 136.

5. Some members considered that the Bill would restrict the power of school sponsoring bodies (SSBs) to appoint not more than 60% of IMC managers. They considered that such restriction was not in line with the previous practice that SSBs could nominate 100% of the managers in the management committees of the aided schools they operated. In response, the Administration pointed out that section 32 of the Education Ordinance specified that every school should be managed by its management committee and not by its SSB. In addition, section 72A(1) specified that the Permanent Secretary for Education and Manpower did not have a statutory duty to seek the views of SSB in exercising her powers under sections 30(2), 31(2)(a), 37(d), 38(2) and 38A(2).

Admin

6. Some members were not convinced by the Administration's explanation. The Chairman requested the Administration to provide a supplementary paper to explain in greater detail why the Administration considered that the Bill was consistent with Article 141 of the Basic Law, with particular reference to previous practice of religious bodies. Mr LEE Cheuk-yan added that the paper should explain the original intent of Articles 136 and 141, and the approach to be applied in the interpretation of the Basic Law.

IMC constitution

Admin

7. At the Chairman's request, the Administration undertook to provide the Chinese version of the sample constitution for IMCs for discussion at the next meeting [LC Paper No.CB(2)2970/03-04(01)].

II. Any other business

Date of next meeting

8. Members agreed to cancel the meeting scheduled for Friday, 2 July 2004 and hold the next meeting on Tuesday, 6 July 2004 at 2:30 pm.

9. The meeting ended at 11:00 am.

Council Business Division 2
Legislative Council Secretariat
21 September 2004

**Proceedings of the meeting of the Bills Committee on
Education (Amendment) Bill 2002
on Wednesday, 30 June 2004 from 9:30 am to 11:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
0000 - 0820	Chairman Admin	Introduction and briefing on the Administration's papers for the meeting.	
0821 - 5040	Chairman Admin Mr CHEUNG Man-kwong Ms Audrey EU Mr LEUNG Yiu-chung Mr SZETO Wah	Consistency of the Bill with Articles 141 and 136 of the Basic Law; the interpretation of "previous practice" in Article 141(3), and the relationship between Articles 136 and 141 of the Basic Law [LC Paper No.CB(2)2989/03-04(01)].	See para 6 of the minutes
5041 - 5220	Chairman Admin	Cancellation of the meeting on 2 July 2004 and additional meeting on 6 July 2004 at 2:30 pm.	See para 8 of the minutes
5221 - 5757	Mr SZETO Wah Mr LEE Cheuk-yan Mr CHEUNG Man-kwong Admin	Chinese version of sample constitution and the legislative intent of Article 141 and "according to previous practice".	See para 7 of the minutes
5758 - 011657	Chairman Admin Mr LEUNG Yiu-chung ALA1	Implication of section 64(3) of the Interpretation and General Clauses Ordinance (Cap.1) on the appeal mechanism under the Education Ordinance [LC Paper No.CB(2)2989/03-04(02)].	
011658 - 012500	Chairman Admin	Sample constitution and procedures for election of parent managers.	
012501 - 012659	Chairman Mr Tommy CHEUNG Mr YEUNG Yiu-chung	Date of next meeting	

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