

Bills Committee on Education (Amendment) Bill 2002

Education and Manpower Bureau's Response to Issues Raised at 15 Meetings

Held from 27 February to 5 December 2003

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Transfer of Functions from Supervisor to Principal in IMC Schools in
the Education (Amendment) Bill 2002

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Issues	Members'/Deputations' Concerns	Administration's Response
1. Justifications for legislation		
<i>a. Justifications for legislating the SBM framework</i>	<p>Explain the justifications for enacting the Bill to give legal backing to the school-based management (SBM) governance framework. (27.2.2003)</p> <p>Elaborate on the justifications for establishing a statutory framework for the implementation of SBM in place of the existing practice which allows schools to decide when and how parents and teachers would be invited to participate in school management. (17.3.2003)</p> <p>Re-examine the need to legislate for implementing SBM; and if a statutory framework is necessary, consider whether flexibility should be given for aided schools to decide whether and when they should establish an IMC in accordance with the proposals in the Bill. (18.9.2003)</p>	<p><u>Principles</u></p> <p>The underlying principles of SBM are to provide all key stakeholders (i.e. school sponsoring bodies (SSBs), the principals, teachers, parents, alumni and independent members) participatory decision-making in such areas as school policies, strategic planning, human resources, finance as well as self-evaluation, so as to enhance the transparency and accountability of school management. This will lead to better school management and enhance the teaching effectiveness.</p> <p><u>Background</u></p> <p>From 1991 to 1997, we implemented the School Management Initiative (SMI) Scheme, the purpose of which was to establish in schools a participatory SBM framework. There were 334 (about 30%) schools joined the Scheme on a voluntary basis. However, after the promotion for participatory governance for over 10 years, only 65 schools participating in the Scheme included teacher and parent managers in their school management committees (SMCs). The majority of the remaining schools adopted a wait-and-see attitude.</p>

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		<p>According to our data in April 2003, the percentages of schools with teacher, parent and alumni managers in their SMCs are 22, 17 and 17 respectively. It clearly indicates that the participation rate of teachers, parents and alumni is still low. It is therefore necessary to strengthen the participation of key stakeholders in SBM through legislation.</p> <p><u>Justifications</u></p> <p>Schools constitute a major part of an education system. Thus, their governance structure must be clearly defined in law. The existing Education Ordinance has also defined the responsibilities of SMCs, the functions of supervisors and principals, etc. Hence, the SBM governance structure should also be provided with a legal basis. Legislation can on the one hand, protect the rights of participation of key stakeholders in school management and on the other hand, clearly recognise the powers and responsibilities of every party. It will also ensure that key stakeholders have a better understanding of school operation and can reflect their expectations for school development which better meet the genuine needs of a school. Therefore, it is necessary to legislate the governance structure.</p> <p>SBM can effectively promote school self-improvement, enhance the effectiveness of school management and hence guarantee the quality of learning and teaching. Thus, we should implement the SBM governance structure as soon as possible. Through legislation, it will demonstrate the Government's commitment to implement the SBM requirements and ensure compliance on the part of the SSBs.</p> <p>Besides, the existing Education Ordinance has not offered any protection to school managers from their legal liabilities. To improve the current situation, we have to legislate the establishment</p>

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		<p>of incorporated management committees (IMCs) in order to provide adequate protection to managers from their legal liabilities.</p> <p>The Government has spent huge resources on school education every year, approximately \$40 million for an aided secondary school and \$20 million for an aided primary school. With the implementation of SBM, schools have been devolved with greater autonomy in their operation, including the appointment and promotion of teachers and deployment of resources for long-term planning. Legislation can ensure the effective use of public funds and flexibility in deployment of resources.</p> <p>The proposal of incorporating the SBM governance framework requirements in the Codes of Aid is not feasible. If a school violates the Code, we can only reduce its subsidies, resulting in students' interests being affected. This might also eventually end up with a judicial review. We have also considered the suggestion of incorporating SMCs under the Companies Ordinance as a corporate body but this will bring along extra administrative work to schools, such as putting in place a memorandum and articles of association, filing annual returns to the Companies Registry and paying registration fee, etc. if they are to comply with the Ordinance.</p> <p><u>Conclusion</u></p> <p>Summing up, we should implement the SBM governance framework by going through the legislative route and to require all aided schools to establish an IMC and implement SBM fully.</p>

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<i>b. Implementing the framework through other means</i>	Specify the proposals in the Bill that must be enforced by legislation; and those that can be implemented through administrative instructions or guidelines. (18.9.2003)	We have conducted a holistic review of the recommendations of the Bill and noted that some of the key issues like incorporation of the management committee, exemption of managers' legal liabilities, transfer of the statutory functions of a supervisor to an IMC, the IMC chairperson and the principal and vesting of properties and liabilities on the IMC, etc. must be implemented by legislation. Therefore, it is not appropriate to implement the recommendations through administrative instructions or guidelines.
2. School Sponsoring Bodies		
<i>a. An SSB should have power to dissolve an IMC and veto its decisions</i>	<p>An SSB's power is not clearly stated in the Bill to enable it to perform its functions. (Deputation's concern)</p> <p>Clarify whether an IMC constitution can contain provisions empowering the SSB to dissolve an IMC, which fails to perform its functions in a satisfactory manner or to carry out the vision and mission set by the SSB. (17.3.2003)</p> <p>Consider whether the SSB should be empowered to veto the decision of the IMC that the SSB considers to be at variance with the vision and mission for the school. (11.4.2003)</p>	<p>The Bill already sets out the functions and responsibilities of the SSB, including:</p> <ul style="list-style-type: none"> i. setting out the vision and mission for the school and ensuring through the SSB managers that the mission is carried out; ii. maintaining full control of the use of funds and assets owned by it; iii. giving general directions to the IMC in the formulation of education policies of the school and overseeing the performance of the IMC; iv. being responsible for drafting the IMC constitution; v. making up to 60% of IMC membership; and vi. making a written request to the IMC to issue a notice to the Permanent Secretary for Education and Manpower (PSEM) to cancel the registration of an SSB manager. <p>Besides, the Bill provides that the IMC is responsible for ensuring that the mission of the school set by the SSB is carried out; and is accountable to the SSB for the performance of the school. The SSB also has the power to appoint the IMC chairperson and may specify in its own constitution the duties, nomination and</p>

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		<p>cancellation of registration of SSB managers. It can also exert its influence and steer the IMC through the SSB managers.</p> <p>The above measures are adequate for SSBs to ensure that managers and IMCs perform their functions satisfactorily. We do not consider it necessary or appropriate for SSBs to be empowered in the IMC constitution to dissolve the IMC or to specify that SSBs can veto the decisions of IMCs.</p>
<i>b. General directions issued by SSB</i>	<p>Explain the type of “general directions” an SSB can give to an IMC under proposed section 40AD(1)(e) on the formulation of education policies of the school. (9.5.2003)</p>	<p>Some examples of “general directions” to be given by the SSB to the IMC under proposed section 40AD(1)(e) are:</p> <ul style="list-style-type: none"> i. guidance on the directions and priorities of school development ii. guiding principles on home-school cooperation, e.g. request a school to set up a parent-teacher association (PTA) iii. other criteria apart from the mandatory requirements with regard to the selection of the principal iv. instructions on the staff appraisal policy to tie in with the direction of school development
<i>c. Relationship between SSB and IMC</i>	<p>If an SSB and an IMC hold different educational ideals and are not co-operating to work towards achieving the vision and mission, how will the Administration resolve their conflict? (17.3.2003)</p>	<p>Since the SSB is to draft the IMC constitution and its representatives may make up to 60% of the IMC, the SSB should be able to steer the IMC. The situation of SSB and IMC being unable to cooperate due to their different educational ideals is very unlikely to happen.</p> <p>If 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 interests of the pupils. If necessary, PSEM may give appropriate directions to the IMC.</p>

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	<p>Elaborate on the mechanism to resolve conflicts between an SSB and an IMC, which may arise from the exercise of the functions of the SSB in proposed section 40AD. (9.5.2003)</p>	<p>If the SSB is not satisfied with the proposals of the IMC in managing the school, it can exercise its influence on the decisions of the IMC through the SSB managers who may make up to 60% of the IMC. If the SSB managers are found not working in accordance with the vision and mission of the SSB or not following its instructions, the SSB may exercise its power under proposed section 40AV to cancel the registration of the relevant SSB manager and nominate another manager.</p> <p>The SSB may also notify PSEM of any improper act or mismanagement of the IMC. If necessary, the staff of the Regional Education Office of the Education and Manpower Bureau (EMB) will conduct an investigation. Section 82 of the Education Ordinance provides that if it appears to PSEM 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 or any provision of the Education Ordinance has been contravened in respect of a school, PSEM may give such directions to the school as he thinks necessary to remedy the situation.</p>
<p><i>d. Operational problems of large SSBs in implementation of new governance structure</i></p>	<p>Large SSBs may face practical difficulties in appointing sufficient representatives to an IMC since SSB managers may make up to 60% of the total number of managers in each of its sponsored schools. Also, school managers cannot serve on more than five IMCs. (11.4.2003)</p>	<p>Assuming that seven SSB managers in the IMC will meet the 60% quota and each manager serves on five schools, it is observed that among the five largest SSBs, which operate over 30 schools, the number of existing managers of the two largest SSBs is sufficient to meet the new requirement. The remaining three have expressed that they will make plans to resolve the problem.</p>
	<p>Explore the operational problems a large SSB may face as it has to co-ordinate attendance of sufficient SSB managers at IMC meetings and supervise the work of these IMCs. (11.4.2003)</p>	<p>Proposed section 40AD already empowers the SSB to give general directions, coordinate and monitor the performance of an IMC in the formulation of education policies. The SSB may stipulate in the IMC constitution that the IMC has to submit the School Report to the SSB. The SSB may also enter into a more detailed agreement</p>

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		<p>with the IMC in managing the school. As SSB managers are appointed by the SSB, they may state clearly the duties and responsibilities of SSB managers in the SSB constitution and the appointment letters issued to the relevant managers. Large SSBs usually employ full-time administrative staff to help resolve operational difficulties. Such staff may be exempted from the requirement that a manager can serve on not more than five IMCs.</p>
<p><i>e. SSBs cease operating schools</i></p>	<p>Consider contingency procedures in case a large SSB decides to cease operation of its schools as a protest against the implementation of the proposals in the Bill. (27.2.2003 & 11.4.2003)</p>	<p>The Bill has responded to most of the major concerns of SSBs, for example, reducing the number of parent and teacher managers from two to one; stipulating that the SSB shall be responsible for setting out the vision and mission of a school and maintaining full control of the use of funds and assets owned by it; clearly defining the functions of SSBs and IMCs; providing a 5-year transitional period; allowing SSBs to draft the IMC constitution; allowing SSBs to appoint the IMC chairperson; exempting, upon good cause, SSB managers from serving on no more than five schools; the establishing a principal selection committee; retaining the post of supervisor; and enhancing the legal liability protection for managers. We will also propose the provision of an alternate SSB manager to ensure the 60% representation of SSB managers in the IMC.</p> <p>We noted that the principle of participatory decision-making by all key school stakeholders was widely supported by community members. Since SSBs have a strong sense of providing quality education in serving the public, we trust that they will continue to uphold their mission and demonstrate their commitment.</p>

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3. Incorporated management committees		
a. Powers of IMCs in personnel matters	Consider improving proposed section 40AE(2)(b) and (c) to provide expressly that IMCs should be subject to the respective Codes of Aid for primary, secondary and special schools in determining the terms and conditions of employment for their teaching staff under the approved establishment. (27.2.2003 and 17.3.2003)	We shall amend proposed section 40AE to state explicitly that IMCs should be subject to the respective Codes of Aid for primary, secondary and special schools in determining the terms and conditions of employment for teaching staff under the approved establishment.
	Provide the Bills Committee with a draft Committee Stage amendment (CSA) to proposed section 40AE(2)(b) to state explicitly that IMCs shall be subject to the respective Codes of Aid for primary, secondary and special schools in determining the terms and conditions of employment for teaching staff and certain non-teaching staff under the approved establishment. (11.4.2003)	
	Elaborate on the legislative effects of the proposed draft amendments to new sections 40AE(2)(b) and (c). (Deputation's concern)	Sections 40AE(2)(b) and (c) empower an IMC to employ staff and engage outside service and fix their remuneration. However, section 40AE(3) stipulates that the exercise of such powers of the IMC is subject to the Codes of Aid and other terms governing government grants. In the case of an employee occupying a post provided for in the Code of Aid, the IMC cannot pay a salary that is lower than that stipulated in the appropriate pay scale. We shall propose an amendment to spell this out in even more unequivocal terms in the Bill to avoid doubts.

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<i>b. Powers of IMCs to use and invest their funds</i>	<p>In the IMC constitution, an SSB should be allowed to restrict the powers of an IMC provided under section 40AE(2), i.e. The IMC may take on lease, purchase or otherwise acquire properties, borrow money, invest its funds or enter into any contract. (Deputation's concern)</p> <p>Define the meaning of "high-risk investment" and explain how the power of an IMC to invest its funds will be monitored. (7.11.2003)</p>	<p>Proposed section 40AE(3) provides that IMCs will be subject to the Codes of Aid when exercising their powers, and they should follow the directions given by PSEM as provided for under section 40CC. In addition, the Government has imposed restriction on aided schools in their investment of public assets, e.g. they are not allowed to borrow money or invest government funds in high-risk investments.</p> <p>According to EMB Circular No. 2/2003, in order to protect the interests of schools, all income derived by schools should be kept in a manner that involves the minimum risk. Surplus funds which are not immediately required for use by schools may be placed in time deposits or savings accounts with licensed banks. Any other form of speculative investment (e.g. local equities) is not recommended because of the risk of financial loss.</p> <p>The circular also suggests that schools follow the guidance of the Hong Kong Monetary Authority on spreading their bank deposits among several licensed banks to ensure that the exposure to any one bank not exceeding, say, 50% of the funds. For fund size of over \$5 million, deposits with any one bank should be subject to a maximum exposure equivalent to 20% of the total funds under management.</p>
	<p>Consider whether an IMC should be required to seek the approval of an SSB in question before it can borrow money; and clarify whether the SSB would ultimately be held responsible for liabilities which has not been settled in full by the IMC. (7.11.2003)</p>	<p>When the IMC has been established, it is a separate legal entity and can be sued directly in its own right. Hence, the SSB will not be held responsible for any unsettled liabilities of the IMC.</p> <p>However, if the IMC has to obtain approval of the SSB before it can borrow money, it means that the SSB may have to shoulder the liabilities involved.</p>

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c. Powers of IMCs to receive gifts or donations	Re-examine the need to empower an IMC to solicit and receive gifts or donations; and re-consider the powers and responsibilities of the IMC and an SSB in soliciting gifts or donations. (7.11.2003)	<p>Since the IMC is responsible for managing the school, if the donor specifies clearly that the beneficiary is the school or the IMC, the donation should be vested in the IMC.</p> <p>Some LegCo members worried that if both SSB and IMC have the power to raise funds, it may lead to competition and disputes. There will be no confusion if the donor clearly identifies the beneficiary. The SSB may raise funds for itself or the school. In the former case, it will be up to the SSB to decide on the usage of the donation. In the latter case, the beneficiary would be the school and the IMC should manage the donation according to the stated purposes.</p> <p>Likewise, the IMC may also raise funds for the SSB or the school. If the beneficiary is the school, the donation would be vested in the IMC.</p>
d. Appointment of managers by PSEM and dissolution of IMCs	Explain the existing procedures for the Administration to intervene in the management of a school, i.e. urging the SMC of a school to consider changing its senior management, appointing government officials or suitable persons as managers of a school, or taking over the operation of a school. (9.5.2003)	<p>Officers of Regional Education Offices and the Quality Assurance Division of EMB conduct inspections on schools and will provide support to schools which have problem in their management. If required, PSEM may appoint one or more persons to be managers of the school under section 41 of the Education Ordinance. PSEM may also direct remedial measures to the management committee under section 82(2) of the Ordinance.</p> <p>The Bill provides that the IMC Chairperson can be appointed by the SSB or elected among IMC members. Since the SSB already maintains a steering position in the IMC and has the power to remove SSB managers, it is not necessary to empower the SSB to dissolve the IMC. Dissolution of the IMC will engage technical problems like transfer of assets and properties as well as legal liabilities, which are rather complicated. Therefore, if the school is</p>

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		<p>found not managed satisfactorily, we shall restructure the IMC through appointing or cancelling the registration of its managers and not dissolving the IMC. The Bill only provides for the dissolution of the IMC when the registration of the school is cancelled. Other than this, no party can initiate the dissolution of the IMC.</p> <p>If the IMC does not follow the remedial measures directed by PSEM under section 82(2), PSEM may cancel the registration of the school.</p>
	<p>Give an account of past cases of such interventions since 1997. (9.5.2003)</p>	<p>Since 1997, there have been four cases in which we cancelled the registration of managers upon request of a majority of managers in aided schools. There have been five cases in which managers were appointed to improve the management of the school.</p>
	<p>Elaborate on the appeal channels available to parties who are affected by the Administration's actions (appointing government officials or suitable persons as managers of a school, or taking over the operation of a school.) (9.5.2003)</p>	<p>Section 41 of the Education Ordinance empowers PSEM to appoint additional managers to an IMC. The existing appeal mechanism under the Ordinance is not applicable to this section.</p> <p>But if the provisional registration or registration of a school is being cancelled under section 22(1) of the Education Ordinance, the management authority of the school may lodge an appeal to the Appeals Board under section 61.</p>
<p><i>e. Schools adopting other governance structure should also be allowed to enjoy the legal status of an IMC</i></p>	<p>The legal status of an IMC provided by the Bill should also be applicable to management committees of schools that adopt other kinds of governance structure. (SSB's concern)</p>	<p>The IMC is only a constituent part of the SBM governance framework; its legal status and the entire framework should be considered together. If a school chooses to implement only some of the parts of the framework, it would not fulfill the relevant legal requirements nor the SBM principles of participation, transparency and accountability.</p>

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4. Constitutions of incorporated management committees		
a. IMC constitutions to be approved by PSEM	<p>The Bill provides that an IMC constitution should be approved by PSEM. Elaborate on the justifications for empowering PSEM to approve the draft IMC constitution. (24.10.2003)</p> <p>Re-examine the need for empowering PSEM to approve amendments to the IMC constitution passed by an IMC. (24.10.2003)</p>	<p>To ensure that the IMC constitution complies with the requirements of the Education Ordinance, the Bill provides that the draft IMC constitution and its subsequent amendments shall be approved by PSEM. The Bill also provides that the IMC shall be established after the IMC constitution has been approved.</p> <p>Regulation 75 of the Education Regulations already provides that the constitution of the management committee and its subsequent alternation or amendment shall have the approval of PSEM. Therefore, the Bill does not accord PSEM with any new authority.</p> <p>Aided secondary and primary schools receive about \$40 million and \$20 million government subventions every year. Along with the devolution of responsibilities to schools, there should also be checks and balance to ensure proper school management and use of public funds. Besides, the Bill has provided for an appeal mechanism, which allows SSBs to lodge an appeal to the Appeals Board to review PSEM's decision on the draft IMC constitution.</p> <p>IMCs operate in accordance with their constitutions. The Bill only gives broad directions for the IMC constitution. SSBs need to set out arrangements for the operation of the IMC in the draft IMC constitution. Allowing PSEM to approve the IMC constitution will not only ensure compliance with legislative requirements, but also avoid any missing provisions, which may lead to problems in decision-making or operation. Therefore, it is necessary for PSEM to approve the draft constitution and its amendments to ensure that the IMC will operate smoothly and manage the school properly by following its constitution.</p>

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		<p>Moreover, other countries like Australia, New Zealand, USA and UK also require the school managing bodies to submit their constitutions and subsequent amendments to the education authority for approval or scrutiny.</p> <p>We shall propose an amendment to the Bill to extend the appeal mechanism to cover PSEM's decision on the subsequent amendments to the IMC constitution.</p>
<i>b. Autonomy in drafting and revising IMC constitutions</i>	An SSB should have full autonomy in drafting and making subsequent amendments to an IMC constitution. (Deputations' concern)	Proposed regulation 75A(2)(1) provides that the SSB may provide in the IMC constitution the procedures for amending the constitution. Therefore, the SSB has full autonomy in this regard.
<i>c. Appointment and dismissal of teaching staff</i>	The Director of Audit in his Report No. 39 noted that some schools did not follow regulation 76 of the Education Regulations, which stipulates that the appointment and dismissal of any member of the teaching staff of any school should be determined by a majority vote of all the members of the SMC of that school. As such, the Public Accounts Committee (PAC) was of the view that it would be relevant to study the procedures, particularly whether delegation or ratification was allowed under an IMC constitution. The Administration should explain how the Bill addresses the concern of PAC on the issue and how the Administration would enforce the requirement after the enactment of the Bill. (21.11.2003)	Regulation 76 of the Education Regulations provides that the appointment and dismissal of any members of the teaching staff of any school shall be determined by a majority vote of all members of the management committee of that school. EMB will continue to require schools to follow this regulation. There is no provision made in the Bill in respect of such requirement. We shall propose in the sample IMC constitution that the appointment and dismissal of teaching staff must be determined by a majority vote of all members of the IMC. The relevant decision must be made prior to the appointment or dismissal, and should not carry any retrospective effect. Also, the power of making such decision can neither be delegated to the IMC chairperson nor to individual managers.
5. Liability and insurance		
<i>a. Protection</i>	Managers should be offered greater protection to ensure	Proposed section 40BG sets out that a manager shall not incur any

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<i>against legal liabilities for IMC managers</i>	immunity from litigation as legal proceedings would incur expenditure on the part of individual managers. (Deputations' concern)	civil liability in respect of anything done or omitted to be done in the performance of his functions as a manager if he acts in good faith. Hence, the Bill provides much enhanced protection for individual managers as compared to the existing arrangement. It is not appropriate to grant immunity from legal suit to IMC managers. As a matter of policy, managers should not be exempted from liabilities in respect of acts done otherwise than in good faith. Whether an act is done in good faith must be determined by the court. If managers are immune from suit, the court will not have the jurisdiction to decide on that crucial question. Because of the exemption provided for in proposed section 40BG, a manager who acts in good faith is unlikely to be sued.
	If more than one model is considered for the governance structure of schools, the same treatment and protection against civil liability claims should apply to managers in schools under different models. (Deputations' concern)	The Bill does not provide for legal liability exemption to managers of schools without an IMC. Since the management committee of a school without an IMC does not have an independent legal status, any legal actions brought against the management committee is in effect against the managers, who may be liable individually or jointly. On the other hand, the IMC is a separate legal entity and can be sued in its own right. It can also take out insurance to give it increased protection. As the IMC can be named as a defendant in legal proceedings, statutory exemption granted to individual managers will not cause hardship to potential plaintiffs.
<i>b. Liability of managers</i>	According to section 40BG, if a manager acts in good faith in carrying out his duties, he shall not incur any civil liability. Explain how the test of "acting in good faith" can be satisfied in such situations when a manager is not present at a meeting, or he is notified of an act at a subsequent meeting, or an alternate manager votes for the act at a meeting. (7.11.2003)	'Acting in good faith' is a common legal concept. In general terms, a person acts in good faith if he acts honestly and without ulterior motive. In relation to the discharge of public duties, it involves "giving one's mind to the comprehension and one's will to the discharge of the duty towards the public" (per Lord Sumner, <i>Roberts V Hopwood</i> [1925] AC 578).

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		<p>As IMCs are separate legal entities, they incur civil liabilities in their own names in respect of their own acts. Therefore, individual managers would not be held liable for the acts of IMCs. The protection from civil liability accorded by section 40BG is in fact an extra “shield” for individual managers in case they are personally involved in the act.</p> <p>If a manager is absent from a meeting during which an act is resolved by an IMC to be done, the protection accorded by section 40BG(2)(a) may not be relevant to the manager because the manager has not acted in relation to the act. The manager concerned would not be exposed to civil liability in respect of the act.</p> <p>For managers who are only notified of the act in question in a subsequent meeting, they will also not incur civil liability in respect of the act.</p> <p>If an alternate manager is allowed to vote and has actually voted during a meeting of the IMC, the legal liability of the alternate manager is the same as that of a regular manager who has voted.</p>
	<p>Whether it would be relevant to compare the liabilities of a director of a limited company with the liabilities of a manager. (7.11.2003)</p>	<p>A director is a member of the governing body of a limited company of which he may or may not be a member. A director owes a duty to the members of the company. A school manager is always a member of an IMC. Thus, the situation of school managers and directors are not the same. The Companies Ordinance (Cap. 32) and the related company law do not apply to IMCs.</p> <p>Limited companies would pay their directors while managers generally offer voluntary service to a non-profit-making body. They should therefore not be expected to expose to the same legal</p>

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	<p>Whether the Administration would consider indemnifying a manager against any liability incurred by him in defence proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted along the lines of section 165 of the Companies Ordinance. (7.11.2003)</p>	<p>liability risk as the company directors. It would be in the public interest to protect the liability of school managers in order to encourage more people to participate in school governance.</p> <p>Section 165 of the Companies Ordinance renders illegal any provision in the articles of a company (or in a contract with it) which exempts an officer or the auditor of the company from certain legal liabilities (relating to negligence, default, breach of duty or breach of trust) or indemnifies such persons against such liabilities. An example of such provision is one which stipulates that the company cannot sue its directors for negligence in performance of duties. Section 165(c) provides for an exception to the above prohibition. The objective of section 165 is to protect shareholders.</p> <p>There is no similar restriction under the Bill in relation to waiving claims against a manager in respect of the above-mentioned legal liabilities. The constitution of an IMC can therefore prohibit the IMC from suing the managers for breach of duty, etc. Proposed section 40BG offers protection to managers for acts done in good faith. They cannot be sued if they have acted without fraud or malice. If a manager acts in bad faith (e.g. stealing money belonging to the IMC), he probably commits a criminal offence. The prospect of being prosecuted and sentenced should be able to discourage managers from stepping across the line. It is not our policy to have the prohibition provided for in section 165 of the Companies Ordinance. Therefore, we do not consider it necessary to provide for the excepted indemnity mentioned above.</p>

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	<p>Clarify the burden and standard of proof in proceedings against a manager of a school under section 18A, section 87 and regulation 101; and explain why the liability of an IMC manager is different from that of a director or other officer concerned in the management of a company under section 101E of the Criminal Procedure Ordinance (Cap 221), i.e. the prosecution should prove that the offence is committed with the director's consent or connivance. (7.11.2003)</p>	<p>There are quite a number of provisions that impose criminal liability on the ground of 'consent or connivance', the most notable one being section 101E of the Criminal Procedure Ordinance. The expression of 'consent or connivance' covers two situations: (i) where a person has actual knowledge of the doing of the act; and (ii) where a person shuts his eyes to an obvious means of knowledge and thus deliberately refrain from making enquiries the results of which he might not care to have. (reference: <i>Mohan Gulabrai Mirchandani & ors v. R</i>, [1977] HKLR 523)</p> <p>We shall amend proposed sections 18A(4), 87(10) and regulation 101(9) so that a manager can only be charged with the relevant offence if the contravention in question has been committed by the IMC with the consent or connivance of the manager.</p>
	<p>Whether the reason for having members of an IMC held personally liable subject to the availability of statutory defence is consistent with the current policy in relation to members of a management committee. (7.11.2003)</p> <p>Under the proposed governance structure, the principal of a school is an ex-officio member and an employee of the IMC. As an employee and a school administrator, the principal will follow the directions and instructions given by the IMC in fulfillment of his duties and responsibilities. In case the principal is charged with an offence under the Education Ordinance or Education Regulations, it would be more difficult for him to prove that the offence is committed without his knowledge or consent, or he has taken all reasonable steps to prevent the contravention of the regulation. (Deputations' concern)</p>	<p>The provisions in the Bill concerning criminal liability of managers are consistent with the existing provisions.</p> <p>We shall amend proposed sections 18A(4), 87(10) and regulation 101(9) so that a manager can only be charged with the relevant offence if the contravention in question has been committed by the IMC with the consent or connivance of the manager. Therefore, the provisions relating to the commitment of an offence without one's knowledge or consent are no longer applicable.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>EMB should clarify whether an SSB will ultimately be held responsible for any unsettled liabilities of an IMC. (Deputations' concern)</p>	<p>The SSB and the IMC of a school are separate independent legal entities. As a general rule, the SSB will not be held responsible for the unsettled liabilities of the IMC. However, the SSB may still be liable in the following circumstances:</p> <ul style="list-style-type: none"> i. The SSB is liable under a guarantee or indemnity given by it. ii. The SSB is itself a party to the agreement or arrangement under which the IMC incurs liability. The SSB may then be liable in its own right. iii. The SSB is otherwise liable in its own right. For example, the SSB makes a defamatory statement at a meeting through an SSB manager. The defamed person may sue the SSB. iv. The IMC incurs the liability when it acts as an agent of the SSB in a particular transaction. The SSB is then liable as the principal. This should be rare because the SSB does not get involved in the day-to-day management of the school.
<p><i>c. Supporting legal services for schools</i></p>	<p>Give an account of the legal service which will be provided to an IMC and their members in support of the implementation of the proposals in the Bill. (10.10.2003)</p>	<p>We will provide on-site and web-based services to help schools set up their IMCs. These include the provision of a sample IMC constitution and solutions to common problems for reference of SSBs in drawing up the details of the IMC constitution and establishing IMCs for their sponsored schools. At the same time, we will encourage SSBs to invite committed legal professionals to join IMCs. We will also explore the provision of other voluntary legal services, such as forming a legal professional supporting network which may make use of the Internet to provide professional advice to schools.</p>

Issues	Members'/Deputations' Concerns	Administration's Response								
d. Block Insurance Policy (BIP) and additional insurance coverage	The Government should arrange insurance cover to protect school managers from liabilities. (Deputations' concern)	The Government has arranged for aided schools a BIP to cover public liability, employees' compensation and group personal accident risks. The maximum limits for the 2003/04 and 2004/05 school years are—								
	Clarify whether IMC managers in the discharge of IMC duties are covered by the BIP for aided schools. (13.11.2003)	<table><tr><td><u>Class of Insurance</u></td><td><u>Limit of Indemnity</u></td></tr><tr><td>Public Liability</td><td>HKD 100 million per any one occurrence</td></tr><tr><td>Employees' Compensation</td><td>HKD 100 million per any one event for each insured school</td></tr><tr><td>Group Personal Accident</td><td>Up to HKD 100,000 per student</td></tr></table>	<u>Class of Insurance</u>	<u>Limit of Indemnity</u>	Public Liability	HKD 100 million per any one occurrence	Employees' Compensation	HKD 100 million per any one event for each insured school	Group Personal Accident	Up to HKD 100,000 per student
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Group Personal Accident	Up to HKD 100,000 per student									
Describe the additional insurance cover that can be provided to IMC managers and clarify whether IMC managers should pay the costs of such insurance cover. (13.11.2003)	Activities organised by the school or activities organised by a PTA or an alumni association which are approved by the SMC will be covered by the BIP. Members of the SMC, employees of the school, voluntary helpers and students taking part in school activities would be covered by the Public Liability insurance.									
Describe the areas of insurance which are relevant to the functions of IMCs but not covered under the BIP for aided schools. (21.11.2003)	Public Liability covers the liabilities in respect of accidental injury to any person, and/or accidental loss of or damage to any property. Employees' Compensation covers the liability in respect of death or injury by an accident or a disease arising out of and in the course of employment either under the Employees' Compensation Ordinance or otherwise at law. Group Personal Accident covers the liability in respect of accidental death and disablement of students taking part in school activities. The BIP will also cover the cost of defence and legal representation.									
		New additional items are included in the Public Liability under the BIP which cover the legal liability and third party claims in respect of impairment of any person's mental condition caused by anguish, shock or trauma and impairment of a student's mental condition								

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>arising from counselling activities conducted by professional counsellors.</p> <p>The current BIP offers quite a comprehensive protection to the management committees and school managers. However, there are possibilities that school managers might still be subject to the exposure of the following liabilities, which are not covered by the BIP:</p> <ul style="list-style-type: none"> i. Professional indemnity such as failure to act for the best interest of the school, wrongful educational instruction and breach of duty of care by the professional staff employed by the school. ii. Employment practices liability such as sexual harassment, wrongful termination of employment contract, failure to promote and discrimination. iii. Directors & Officers liability such as employment-related claims and third party discrimination/ harassment claims, infringement of copyright, unintentional breach of confidentiality, libel and slander. <p>Depending on the situation and their own needs, individual IMCs may arrange additional insurance cover to provide better protection to their managers or teaching staff in discharging their duties. The premium for the above insurance cover could be paid from the school's General Funds/Subscriptions Account.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>Elaborate on how an IMC manager who is found, as a result of negligence or otherwise, partly or wholly responsible for the occurrence of an accident in a school or an extra-curricular activity, would be protected from any liability claims. (21.11.2003)</p>	<p>Under the Public Liability Insurance of the BIP for aided schools, if it is established in court that an accident is caused by the negligence of the IMC and the IMC is responsible for the liability incurred, the insurance company will have to pay the compensation in question for the IMC. The maximum coverage is HKD 100 million for any one occurrence. The BIP also provides Group Personal Accident Insurance which offers a maximum coverage of HKD 100,000 for each student on top of other compensation under the law regardless of whether there is any negligence on the part of the school.</p>
	<p>Consider specifying in the Bill that any claim for compensation shall be enforced against an IMC to the exclusion of school managers. (21.11.2003)</p>	<p>We shall propose an amendment to spell out clearly in the Bill that any claim for compensation should be enforced against the IMC to the exclusion of individual school managers.</p>
	<p>Examine whether professional indemnity and Directors and Officers liability insurance should be included under the BIP to further protect IMC managers against legal liabilities. The Administration should consult SSBs on the matter. (5.12.2003)</p>	<p>We are now conducting a preliminary study into the relevant issues of professional indemnity and Directors and Officers liability insurance.</p>

Issues	Members’/Deputations’ Concerns	Administration’s Response
<i>e. Copyright</i>	<p>Explain the current arrangements for compliance with the Copyright Ordinance in using copies of copyright materials for teaching in schools.</p> <p>(21.11.2003)</p>	<p>To balance the interests of copyright owners and users, the Copyright Ordinance (Cap. 528) provides certain limited allowances for copying of copyright works by educational establishments. As such, the Intellectual Property Department has promulgated a set of non-statutory “Guidelines on Photocopying of Printed Works by Not-for-profit Educational Establishments” which allows photocopying to a reasonable extent of literary, dramatic, musical and artistic works in printed form including items like books, periodicals, sheet music and printed music items by or on behalf of educational establishments for instruction purposes. Multiple copies of a work may be made by or on behalf of a teacher for the purpose of distribution to students for teaching, discussion or classroom use. Students may retain the copies for subsequent reference.</p> <p>Furthermore, to increase the flexibility in making photocopies of printed materials for instruction purposes, five Schools Councils (including the Hong Kong Subsidised Secondary Schools Council, the Hong Kong Subsidised Primary Schools Council, the Hong Kong Special Schools Council, the Grant Schools Council and the Caput Schools Council) as agents for their respective member schools and EMB representing the Government schools entered into Licence Agreements with the Hong Kong Reprographic Rights Licensing Society. At present, most schools have joined the licensing scheme and signed the New Licence Agreement on Copying Printed Copyright Materials. The relevant costs were borne by the Government.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>As for the making of photocopies of local newspapers, the Hong Kong Copyright Licensing Association Limited representing 12 local newspapers has waived schools' licence fee under prescribed conditions at making photocopies of local newspapers for internal reference and instruction purpose.</p> <p>For performances of musical repertoire, the Composers and Authors Society of Hong Kong Limited has granted educational establishments exemption from paying royalty if the performance is before an audience of teachers, pupils and other persons directly connected with the activities of the establishment (e.g. parents/guardians) for the purpose of instruction.</p> <p>However, for electronic materials including materials on the Internet and multimedia clips of musical and video, no agreement has yet been reached.</p>
6. Chairpersons of incorporated management committees		
<i>a. Appointment of the IMC chairperson and the principal</i>	Consider incorporating provisions in the Bill to expressly empower SSBs to determine the appointment of the IMC chairperson and the selection of the principal. (30.10.2003)	<p>Proposed section 40AD(1)(g) provides that an SSB shall be responsible for drafting the IMC constitution. Proposed regulation 75A(2)(d) also sets out that the constitution shall provide for the appointment or election of a manager to be or to act as the IMC chairperson. In order to define more clearly the power of the SSB in appointing the IMC chairperson, we shall propose an amendment to set out clearly in regulation 75A(2)(d) that the IMC chairperson can be appointed directly by the SSB or elected among school managers.</p> <p>Proposed section 57A stipulates that the IMC shall establish a principal selection committee consisting of representatives of the SSB, the IMC and, where applicable, such other persons provided</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		for in the IMC constitution before recommending any person to be the principal of a school. This will help to ensure that the selection process is fair, open and transparent. Proposed section 57A(4) provides that PSEM may, on an application and upon good causes shown to his satisfaction, exempt any IMC from the requirement. Such causes may include operational needs to deploy principals among sponsored schools in the case of class reduction. To ensure that the principal selection process is fair, open and transparent, the establishment of the principal selection committee as proposed in section 57A is necessary.
<i>b. Procedures of and requirements for the appointment of the IMC chairperson</i>	State the procedures of and requirements for the appointment of the IMC chairperson; and clarify who will be empowered to appoint the chairperson and whether a parent manager, a teacher manager or an independent manager can be the chairperson. (24.10.2003)	<p>Since the Bill has stipulated that an SSB shall be responsible for drafting an IMC constitution and proposed regulation 75A(2)(d) provides that the IMC constitution should set out the appointment or election of a manager to be or to act as the IMC chairperson, the SSB may provide in the IMC constitution the relevant procedures and requirements for the appointment of the IMC chairperson.</p> <p>Section 40AI(3) provides that the principal or a teacher of the school shall not be the chairperson or act as the chairperson. Other than this, the Bill does not impose restrictions on other categories of managers, including parent managers or independent managers, to become the IMC chairperson.</p>
<i>c. Number of schools to be served on by the IMC chairperson</i>	Consider the suggestion that no person should be allowed to register as the IMC chairperson for more than three schools. (24.10.2003)	<p>The relevant provision in the Bill has balanced the consideration between the workload of the IMC chairperson and the difficulties encountered by SSBs in appointing IMC chairpersons.</p> <p>SSBs may not be able to appoint sufficient number of IMC chairpersons if the suggestion is to be adopted. We therefore do not agree that the number of schools to be served on by the IMC chairperson should be restricted to three or less.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
<i>d. Casting vote of the Chairperson</i>	The chairperson should have a casting vote in case a balance of supporting and opposing votes on an IMC resolution is recorded. (Deputations' concern)	Proposed section 40AD(1)(g) provides that an SSB shall be responsible for drafting the IMC constitution and proposed regulation 75A(2)(k) stipulates that the constitution shall provide for the meetings and proceedings of an IMC. Hence, the SSB may specify the right of a casting vote for the chairperson in the draft constitution.
<i>e. Vacation of office of the Chairperson</i>	How to handle if an IMC chairperson refuses to issue a written notice to PSEM on his vacation of office. Also, whether the IMC constitution should cover contingency measures for this? (Deputations' concern)	As stipulated in proposed section 40AI(1)(b), the vacation of office by the chairperson shall be handled in accordance with the IMC constitution. Hence, an SSB shall set out the procedures in the IMC constitution. For example, the vacation of office by the IMC chairperson may take effect upon a resolution made by a majority of managers or a written notice to PSEM signed by them.
7. Supervisors		
<i>a. Retain the post of a supervisor</i>	Explain how a school with an IMC could retain the post of a supervisor and define his/her role and functions, or alternatively delegate to the chairperson or any other member of the IMC the duties of the supervisor under the current legislation. (24.10.2003)	Proposed section 40AD(1)(g) provides that an SSB shall be responsible for drafting the IMC constitution. Therefore, an IMC school may retain the post of a supervisor and define the role and functions of the supervisor (except for those statutory responsibilities transferred to the IMC chairperson, the IMC or the principal; and the functions of the IMC set out in section 40AD(2)) in the IMC constitution. The IMC may also delegate the duties of the supervisor to the chairperson or any other member of the IMC.
<i>b. Functions of supervisors and IMC chairpersons</i>	Elaborate how the roles and functions of an IMC chairperson and those of a supervisor, if an IMC has appointed one, will be delineated in the IMC constitution, and how disputes between the two in the day-to-day school administration can be resolved. (27.3.2003)	The existing duties of the supervisor are stipulated in section 39 of the Education Ordinance. The supervisor mainly serves as a channel of communication between the management committee and EMB - a role very similar to the proposed role for the IMC chairperson. Schools are free to retain the post of a supervisor, if deemed

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>Highlight the difference in statutory functions between a supervisor appointed in accordance with the current legislation and the IMC chairperson. (24.10.2003)</p>	<p>necessary, and have his/her duties clearly defined in the IMC constitution. In fact, the IMC can delegate to the chairperson or any other member of the IMC the existing duties of the supervisor. Nevertheless, under any circumstances, the IMC is responsible for managing the school. It shall be held accountable for the decision-making and performance of the school.</p> <p>Proposed section 40AJ also empowers the IMC chairperson other responsibilities that are not provided for in the existing Education Ordinance which include: presiding over IMC meetings; signing the statement of accounts of the IMC; informing PSEM upon receipt or issue of a writ or other originating process and the handing down of relevant judgment; and performing such functions as may be provided for in the IMC constitution.</p>
c. Roles and functions of supervisors and principals	<p>List the roles and functions of a supervisor under the existing Education Ordinance and the persons who will take over these role and functions after the enactment of the Bill. (30.5.2003)</p>	<p>Details on the transfer of functions of the supervisor to the IMC chairperson, the IMC and the principal are at <u>Annexes I, II & III</u>.</p>
8. Nomination, election and other requirements of managers		
a. Nomination, election and terms of office of IMC managers	<p>Provide detailed arrangements and procedures for nomination and election of SSB, teacher, parent, alumni and independent IMC managers, and information on their terms of office. (17.3.2003)</p> <p>Explore the need to establish a system of rules and procedures for nomination and election of parent, alumni and independent managers in order to avoid any disputes</p>	<p>Proposed sections 40AK – 40AV already provide for the principles of election of teacher and parent managers and nomination of SSB and alumni managers. Under proposed regulation 75A, the IMC constitution has to provide, among other things, for the number of each category of managers, the procedures for nominating or electing them and their tenure of office. To help schools draft their IMC constitutions and elect their teacher and parent managers, EMB will issue a sample IMC constitution and election guidelines. Briefing sessions will be organised to familiarise stakeholders with</p>

Issues	Members'/Deputations' Concerns	Administration's Response
	in the process. (12.5.2003)	the principles and related arrangements.
	Examine whether an IMC should be required to submit an updated membership list each year to PSEM. (12.5.2003)	Proposed section 40AJ requires the IMC Chairperson to give notice to PSEM if any person ceases to be a manager of the school. Amended section 8(da) provides that EMB shall keep a register of IMCs and the names, tenure of offices and categories of their managers. The register will be updated upon any reported changes of IMC membership. The list will be posted on EMB's homepage. It is therefore not necessary to require IMCs to report their membership annually as this may create extra administrative work.
	Examine whether the Bill should include a provision that an IMC constitution should specify the duration of the term of office of managers appointed by an SSB. (12.5.2003)	Proposed regulation 75A already requires the IMC constitution to state the tenure of office of managers. SSBs should determine and specify the duration of tenure of office of SSB managers in the IMC constitution.
	Consider whether re-appointment of an IMC manager should follow the procedures for registration of a manager. (12.5.2003)	The manager is not required to go through the registration procedures again on re-appointment.
	Provide both a draft IMC constitution with sample procedures for election, nomination and termination of appointment of different categories of IMC managers and a draft constitution of PTA with sample procedures for election, nomination and replacement of its members. (12.5.2003)	EMB will provide a sample IMC constitution for SSBs' reference in due course. The Home School Co-operation Committee has already drawn up a sample PTA constitution. EMB will issue detailed guidelines on the election and nomination procedures for parent and teacher managers when the Bill is enacted.
	At present, some schools have their own incorporation ordinances. These Ordinances may specify someone to	As the Bill does not specify the duration of the term of office of managers, there is no restriction on the term of office of the

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>be ex-officio managers of the SMC. Explain whether and how these managers can be exempted from the requirement on duration of the term of office, and the grounds for cancellation of registration of manager specified in proposed amended section 31(1)(g). (12.5.2003)</p>	<p>ex-officio manager of the SMC designated by virtue of the Ordinance governing an existing school. The exercise of power under proposed section 31(1)(g) is at the discretion of PSEM and is based on an IMC's written notice that a manager has been absent from three consecutive IMC meetings without obtaining its consent. If an SSB can provide justifications acceptable to PSEM or the IMC does not request PSEM to exercise his power under proposed section 31(1)(g), the term of office of these ex-officio managers will not be affected.</p>
<p><i>b. Grounds for cancellation of registration of managers</i></p>	<p>A manager who has been absent from three consecutive meetings of the committee or does not attend all IMC meetings in a school year shall be required to resign automatically. (Deputations' concern)</p> <p>Review the grounds for cancellation of registration of managers under section 31 of the Education Ordinance and consider setting out the procedure in the Bill. (9.5.2003)</p>	<p>For effective school management, we believe that an IMC should hold not less than three meetings a year. Proposed section 31(1)(g)(i) provides that an IMC may request PSEM to cancel the registration of a manager who has been absent without leave from three consecutive meetings of the IMC. To ensure that managers will carry out their duties effectively, we shall propose an amendment to include "a manager does not attend all IMC meetings in a school year" in the grounds for cancellation of registration of managers under section 31 of the Education Ordinance.</p> <p>Procedures for cancellation of managers are administrative measures and we do not consider it necessary to have them set out in the Bill.</p>
	<p>Review the power of PSEM to cancel the registration of a manager and consider whether additional restrictions should be imposed over the exercise of such power; and elaborate on the operation of the appeal mechanism provided under the Bill. (9.5.2003)</p>	<p>In exercising the power under section 31(1) in cancelling the registration of a manager, PSEM must act reasonably and on justifiable grounds. The manager will be asked to make representation before his registration is cancelled. Moreover, the manager can lodge an appeal to the Appeals Board under section 61 against the decision of PSEM. Further appeal can be made to the Chief Executive in Council. The same appeal mechanism applies to the new grounds for cancellation of registration of managers provided in the Bill. Since PSEM's decision is subject to the above</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		appeal mechanism, we do not consider it necessary to have additional restrictions over such power of PSEM.
	Clarify who will grant leave for absence under amended section 31(1)(g)(i) and consider how to facilitate fair and consistent enforcement. (9.5.2003)	<p>The authority to be responsible for granting leave for absence for managers can be spelt out in the IMC constitution. The authority can be the IMC Chairperson or the majority of IMC managers.</p> <p>To better reflect the intention of the provision in proposed section 31(1)(g)(i), we shall propose an amendment to the provision to specify that a manager who is absent from three consecutive IMC meetings “without obtaining the consent of the IMC” (instead of “without leave”) shall constitute a ground for cancellation of registration of the manager.</p>
	Explain the rationale for proposed amended section 31(2)(a) (Chinese version), i.e., repealing “校董會多數校董不再接受該校董為該學校的校董” after “覺得” and substituting with “多數校董不接受該校董為該學校的校董”. (9.5.2003)	The Chinese version is revised by repealing “校董會多數校董不再接受該校董為該學校的校董” and substituting with “多數校董不接受該校董為該學校的校董” because “不再接受” implies that some mechanism has already existed to decide whether a manager is acceptable or not.
c. Managers to provide a medical certificate	Consider whether re-appointment of a manager who is above the age of 70 should be supported by a medical certificate for his fitness. (12.5.2003)	Proposed amendment to section 31 already provides that PSEM may cancel the registration of a manager if the manager fails to produce, upon request of PSEM, a medical certificate issued by a registered medical practitioner after the date of such request certifying that the manager is fit to perform the functions of a manager. That a managers is over 70 could be one of the grounds for PSEM to exercise such power.
d. Minimum qualifications of managers	Apart from parent managers, other managers should have a minimum qualification of secondary education and at least one third of the managers in an IMC should hold a post-secondary qualification. (Deputations' suggestion)	Setting different qualification requirements for different categories of managers may be discriminatory and divisive, which might discourage enthusiastic and capable people from serving on IMCs.

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>Members do not consider it necessary to prescribe a minimum qualification for IMC managers. They agree in principle to the suggestion that one-third of the managers of an IMC should possess a post-secondary qualification. The Administration should provide information on the qualifications of existing managers in rural schools to facilitate their further consideration of the suggestion.</p> <p>(21.11.2003)</p>	<p>At present, 39 (48%) out of 82 rural schools have one-third or more of their managers possessing a post-secondary qualification, and among all aided schools, the managers of 76% of them met such qualification requirement.</p> <p>In view of the fact that managers of most schools have already attained a post-secondary qualification and the implementation of such a requirement may cause administrative difficulties, there is no practical need to set the qualification requirement for managers.</p>
e. Absence from IMC meetings	<p>School managers may, due to various reasons, be absent without good cause from meetings called at short notice by an IMC in order to handle urgent issues (e.g. there was an outbreak of disease in the school). The Administration should consider whether the IMC should be required to prepare a schedule of regular meetings for the purpose of proposed section 31(1)(g) before the commencement of a school year.</p> <p>(21.11.2003)</p>	<p>We will propose in the sample IMC constitution that schools should provide for a schedule of regular IMC meetings at the commencement of a new school year. If a manager is absent from a pre-scheduled meeting without obtaining the consent of the IMC, the IMC can then take actions in accordance with Section 31(1)(g).</p>
f. Managers required to sign an agreement before attending training	<p>Managers should be asked to sign an undertaking before attending training or be qualified to serve as school managers only after they have attained certain targets or standard in the training.</p> <p>(Deputations' suggestion)</p>	<p>At present, managers will only be issued an Attendance Certificate which serves as a recognition of their fulfilling certain training requirements, if they have attended 80% of a five to six half-day manager training course. EMB will ensure that quality will be maintained in the training courses for managers. We find it not appropriate to compel managers to sign a training undertaking.</p>
g. Vacation of office of managers	<p>Explain whether an SSB can terminate the appointment of a parent, teacher, alumni or independent managers and if yes, elaborate on the appeal mechanism available to the manager whose appointment is terminated.</p> <p>(9.5.2003)</p>	<p>The SSB is empowered to make a written request to an IMC for the cancellation of SSB managers. The IMC must notify PSEM to cancel the registration of a manager upon request of the relevant bodies which nominated the manager. The registration of a manager will also be cancelled under section 31(2) if he is no longer</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>acceptable as a manager to a majority of the management committee.</p> <p>The Bill proposes to include new section 40AV under section 60 so that a manager can also lodge an appeal under section 61 when the body nominated him, e.g. the SSB or a PTA, notifies the IMC to request PSEM to cancel his registration.</p>
9. SSB managers		
<i>Nomination of SSB managers</i>	<p>Consider whether certain restrictions should be imposed, by provisions in the Bill or by administrative guidelines issued by PSEM on the nomination of SSB managers to the effect that the spouse, parents or children of SSB managers cannot be the managers of the same IMC. (30.5.2003)</p>	<p>Proposed section 40BE already provides for declaration of pecuniary or personal interests by school managers. Though there is no restriction on the relationship among the managers, PSEM may give directions to the IMC when he finds that a school is not being managed satisfactorily.</p>
10. Principal		
<i>a. Powers of principals</i>	<p>Elaborate on the checks and balance in respect of the day-to-day operation of IMC schools to prevent principals from possibly abusing their powers and appeal channels for teaching and non-teaching staff in IMC schools after the legislation of the Bill. (27.2.2003)</p> <p>Elaborate on the checks and balance of the powers of principals in the day-to-day administration of IMC schools. (17.3.2003)</p>	<p>Under the spirit of SBM, a school will be more accountable for its performance and the use of public funds. Through school self-evaluation, school development plans, annual school plans and school reports, parents and members of the public will be able to monitor the performance of a school. Furthermore, the internal quality assurance mechanisms of schools are subject to inspections by EMB.</p> <p>The IMC is responsible for formulating education policies, planning and managing financial and human resources. Proposed section 58(1) stipulates that the principal shall be subject to the directions of an IMC in carrying out his responsibilities and has to report to the IMC the progress of work. The IMC may assign the chairperson</p>

Issues	Members’/Deputations’ Concerns	Administration’s Response
		<p>or any other member to supervise the work of the principal. If the IMC supervises the operation of a school properly, the principal will not be able to abuse his/her powers.</p> <p>All schools have been advised, through guidelines issued by EMB from time to time, to set up proper procedures for handling staff complaints and appeals. Staff members can always approach the IMC or its chairperson if they have any grievances.</p>
<i>b. Role of principals</i>	<p>Principals will be placed in a difficult position under the new governance structure as they have to mediate among managers who come from different sectors and may hold very different views. (Deputations’ concern)</p> <p>Principals may not be ready to take up the responsibilities transferred to them from a supervisor. (Deputations’ concern)</p>	<p>Being a professional administrator, the principal should be able to coordinate different views in making necessary arrangements in relation to the implementation of school policy. EMB will also provide support to schools in the transformation, including training for managers.</p> <p>The responsibilities to be transferred to the principal are mainly operational matters, e.g. to submit to PSEM plans of school premises, syllabuses, time-tables and school holiday lists. Such duties are currently carried out by the principals and they fall within the principals’ professional expertise and responsibilities.</p>
<i>c. Selection and appointment of principal</i>	<p>Elaborate on the requirement to establish a selection committee for selection and appointment of the principal of an IMC school, and the circumstances which justify the grant of an exemption from such requirement. (17.3.2003)</p> <p>Explain the conditions and procedures for an IMC to apply for an exemption from the requirement to establish a principal selection committee under proposed new section 57A(2) in respect of the principal of a school. (30.5.2003)</p>	<p>The principal selection committee shall be composed of representatives of an SSB, an IMC and such other persons provided for in the IMC constitution. It has the skill to choose collectively the best candidate to be the principal of the school. The spirit is to put in place selection processes that are open, fair and transparent. Proposed section 57A(4) provides that PSEM may, on an application and upon good cause shown to his satisfaction, exempt any IMC from the requirement. Such good cause may include the need to deploy principals among sponsored schools in the case of class reduction.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>Clarify whether an IMC of a school can refuse to accept a principal who is deployed to that school by the SSB concerned. (30.5.2003)</p>	<p>EMB has already provided clear and detailed guidelines to SSBs or IMCs on principal's selection and appointment. The composition of the selection committee would be stated in the IMC constitution. It is the IMC, not the SSB, to recommend the principal to PSEM for approval.</p> <p>Since deployment of school heads amongst sponsored schools is based on administrative needs such as reduction of classes, the SSB should be allowed to make such a decision. The SSB may exercise its influence through the 60% SSB managers if the IMC does not accept the principal deployed by the SSB. The SSB may also agree with the IMC on the arrangements concerning the deployment of principals and teachers among sponsored schools in the IMC constitution.</p>
11. Teacher managers		
<p><i>a. Teacher managers in bi-sessional schools</i></p>	<p>Whether the Bill should specify that the morning session and the afternoon session of a bi-sessional school should each have not less than one teacher manager in an IMC to represent the views and interests of their teachers. (18.9.2003)</p>	<p>The proposed IMC composition requirement in the Bill aims to strike a balance between representation from different stakeholders and a reasonable and manageable size of the IMC.</p> <p>Proposed section 40AD(1)(g) provides that the SSB shall be responsible for drafting the IMC constitution and proposed regulation 75A(2)(a) stipulates that the constitution shall provide for the number of each category of managers in the IMC. Therefore, the SSB is given the power or flexibility in determining, according to their own situation, the number of each category of managers in IMCs of their sponsored schools.</p> <p>As there can be two recognised PTAs in a bi-sessional school, we propose that if this is the case, one parent manager be elected from the PTA of each of the two sessions. Since all the teachers in a</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>bi-sessional school are employed by the same management committee, the teacher manager can be elected amongst the staff from both sessions in principle. Therefore, we do not recommend the same arrangement for teacher managers in bi-sessional schools.</p> <p>If a teacher manager is made mandatory for each session of a bi-sessional school, some SSBs will have to appoint more SSB managers to maintain its 60% quota in the IMC. If two teacher managers are included in the IMC of a bi-sessional school, the SSB will have to appoint ten instead of nine SSB managers to the IMC and the total number of managers in the IMC will increase from 15 to 17. This will increase the burden of SSBs, especially large SSBs, which may have difficulties in appointing sufficient number of SSB managers to sit on IMCs of their sponsored schools.</p> <p>Therefore, the Bill does not require each session of a bi-sessional school to elect a teacher manager to sit on the IMC so as to allow schools flexibility to decide, according to their own situation, the number of teacher managers in their IMC.</p>
b. Election of teacher managers	Clarify whether serving teaching staff on probation or temporary appointment are eligible to vote in the election of a teacher manager of a school. (10.10.2003)	The Bill defines “teacher” as a person employed as a permitted teacher or registered teacher in the school. At present, serving teachers in the school, whether on probation or on temporary contract term, should either be permitted teachers or registered teachers. Therefore, any person who falls within the definition of “teacher” should have the right to participate in the election of teacher managers.
	Consider whether non-teaching staff e.g. laboratory technicians, administrative staff, janitors, etc. employed by the school on a permanent or contract basis, should be given the voting right in the election of a teacher manager	<p>A teacher manager should have the following roles and responsibilities in the IMC:</p> <p>i. brings to IMCs experience in curriculum development, classroom instruction, student activities and educational</p>

Issues	Members'/Deputations' Concerns	Administration's Response
	<p>of the school. (10.10.2003)</p>	<p>enrichment.</p> <p>ii. provides professional expertise for the improvement of student learning and associated school management.</p> <p>iii. forms a solid link between the management committee and the staff of the schools.</p> <p>We therefore require that professional teaching staff of the school elect amongst themselves a candidate to shoulder the above responsibilities.</p> <p>We note that during the past consultation, no schools nor SSBs had requested the inclusion of non-teaching staff in the election of teacher managers. Therefore, we do not recommend that teacher managers be elected among teaching and non-teaching staff of the school.</p>
12. Parent managers		
<p><i>a. Higher percentage of parents' membership in IMC</i></p>	<p>Consider whether parent managers should comprise a higher percentage of IMC membership, say not less than 30%. (17.3.2003)</p> <p>There should be two parent managers in an IMC for continuity sake. (Deputations' suggestion)</p>	<p>The Advisory Committee on School-based Management has taken into consideration the background and development of the management of aided schools in recommending the IMC composition. The success of the education system in Hong Kong owes much to the contributions of SSBs and most schools have been governed by SMCs comprising members mainly appointed by SSBs. The Advisory Committee on School-based Management also recognised the need to balance the interests and concerns of different parties. The Advisory Committee therefore recommended that SSB representatives make up to 60% of the total membership so that SSBs could continue to play an active role in the management of schools. If the category of parent managers comprises a higher percentage of IMC membership, or the IMC has two parent managers (and probably also two teacher managers),</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		SSBs will need to secure more SSB managers to maintain a 60% majority. As a result, the size of the IMC will become unwieldy to operate effectively and efficiently.
<i>b. Election and nomination of parent managers</i>	Describe the existing practices/procedures for the establishment of PTAs in schools and clarify whether there are existing schools with more than one PTA, and explain how parent manager(s) should be nominated in case there are more than one PTA in a school with an IMC. (27.3.2003)	At present, there are no standard procedures for formation of PTAs in schools. Usually, a school will establish a preparatory committee consisting of parents and teachers to draft a constitution for a proposed PTA. Parents and teachers will then be invited to a PTA Formation Meeting to endorse the constitution and elect office-bearers of the PTA. At present, we have no record of schools having more than one PTA. Proposed section 40AM(1) provides that the IMC is the authority to recognise a PTA for the purpose of making parent manager nomination.
	Explain the rationale for restricting the right of vote in the election of a parent manager to members of the recognised PTA who are parents of the current pupils of the school. (10.10.2003)	One of the roles of parent manager is to form a vital link between school management and other parents. In general, PTAs have greater representation and are more easily organised. Therefore, we propose that parent manager(s) should be elected by members of the PTA.
	Examine whether the exclusion of parents who for various reasons are not members of the recognised PTA from the election and nomination process of a parent manager is compatible with the relevant provisions of the Hong Kong Bill of Rights Ordinance. (10.10.2003) Consider the provision of an election system which will allow every parent of a current pupil of a school to vote or to be nominated for the election of a parent manager; as well as to vote for the cancellation of registration of a parent manager of the school. (10.10.2003)	Nevertheless, having taken into consideration Members' views, we shall propose an amendment to allow parents of all current pupils of a school to have the right to vote and be elected in the election of parent managers organised by the PTA. Also, when a parent manager is to be removed, they will have voting right.

Issues	Members'/Deputations' Concerns	Administration's Response
<i>c. Role of parent managers</i>	Parent managers should report their work or collect views of parents. (Deputations' concern)	All manager(s) shall work together with other managers for the interests and benefits of all the students. Despite the sectors they come from, managers serve on the IMC in their personal capacity and they shall be accountable to the IMC. As regards how parent managers should report their work to the PTA or collect views of parents, individual PTAs may set out the details in their own constitution.
<i>d. Recognition of PTAs and Alumni Associations</i>	Set out the criteria and procedures for an IMC to recognise a PTA or an alumni association in schools where more than one PTA or alumni association has been established. (12.5.2003)	The Bill provides that the IMC shall only recognise one PTA or one alumni association subject to sections 40AM(1) and 40AN(1). Sections 40AM(3) and 40AN(3) have already provided criteria on the recognition of PTAs and alumni associations. The IMC/SSB may set out other criteria for recognition of PTAs or alumni association in the IMC constitution. According to our records, only about 7% of the schools do not have a recognised PTA and 33.5% of schools have already a recognised alumni association. Thus, most schools do not seem to encounter difficulties in the recognition of the PTA or the alumni association.
	Explain the criteria for an IMC to recognise a PTA in case there are two or more PTAs in a school. (10.10.2003)	Generally speaking, the chance of a school having to recognise a PTA among two or more PTAs is very slim. If there is more than one PTA, the school should select the one that is more/the most representative and recognised. EMB will provide assistance whenever necessary.
	Explain the existing procedures for registration of a PTA and the legal status of a recognised PTA in the context of school administration; and clarify whether two or more PTAs can register as the PTA of the same school. (10.10.2003)	At present, PTAs in schools are established by one of the following means: (a) registered under the Societies Ordinance; (b) registered under the Companies Ordinance; and (c) as an affiliated body to the school. Since there is no specific restriction and everyone has the freedom of association, we cannot rule out the possibility that there will be

Issues	Members'/Deputations' Concerns	Administration's Response
		two or more PTAs in the same school. However, according to our existing records, no school claims to have more than one PTA.
<i>e. Exemption of parent managers</i>	<p>How would an IMC without a parent manager operate? (Deputations' suggestion)</p> <p>The Bill should allow flexibility to enable special schools to cope with their specific needs. It should include provisions to exempt, where appropriate, special schools and hospital schools from the requirements of an alumni manager and a parent manager in an IMC. (Deputations' suggestion)</p>	If the IMC has any genuine difficulties in finding a parent or an alumni manager, it can apply to PSEM for exemption from the requirement of having parent or alumni managers.
<i>f. 2-day paid leave for parent managers</i>	Employers should be required by legislation to give 2-day paid leave to their employees who are parent managers. (Deputations' suggestion)	The suggestion has far-reaching implications for the entire society. In general, SMCs usually arrange their meetings on dates and at a time convenient to all members, such as in the evenings, on Saturday afternoons or during holidays.
13. Alternate managers		
<i>a. Requirements for alternate managers</i>	Explain the roles, status and voting rights of alternate managers. (Deputations' concern)	The requirement of an alternate parent manager or an alternate teacher manager applies to IMCs having only one parent or teacher manager respectively. Except for voting right, the alternate manager plays the same role and enjoys the same rights as a regular manager. The alternate manager will be entitled to vote when the regular manager cannot attend IMC meetings. The arrangement allows continuity and collegiality of parent and teacher managers participating in the IMC while avoiding the size of the IMC becoming unwieldy.

Issues	Members'/Deputations' Concerns	Administration's Response
<i>b. Attendance of meetings by alternate managers</i>	Alternate managers should only be allowed to attend IMC meetings when the regular manager is not present. (Deputations' concern)	As set out in proposed section 40AH(4) that alternate managers shall not be counted when calculating the relative proportion of the different categories of managers, their attendance therefore will not change the percentage of SSB managers in an IMC.
<i>c. To provide for alternate SSB managers</i>	Since SSB managers participate in IMC work on a voluntary basis and most of them have other commitments, some of them may have difficulty in attending all IMC meetings. To address SSBs' concern, the Administration should consider whether provision could be made in the Bill for alternate SSB managers to attend and vote at IMC meetings to stand for the SSB managers who are absent. The Administration should consult the major stakeholders including parents and teachers about this. (7.11.2003)	We have consulted parents and teachers' associations on the proposal of having an alternate SSB manager. Most of these associations do not oppose the proposal. We shall propose an amendment to provide for an alternate SSB manager in the Bill.
14. Alumni managers		
<i>a. Flexibility for new and primary schools in nominating alumni managers</i>	Flexibility should be allowed for independent managers to take up the places of alumni managers if a school has difficulties in nominating alumni managers. (Deputations' concern)	Proposed section 40AP(5) empowers PSEM to grant exemption to schools from the IMC composition requirement if an IMC has taken all reasonable steps to secure compliance with the composition requirement. This covers genuine difficulty encountered by new schools and primary schools in having an alumni manager. Therefore, alumni manager vacancies need not be filled by independent managers.
<i>b. Age limits of voters and nominees in election of alumni manager</i>	Consider whether a minimum age should be set for voters and nominees in the election of alumni managers. (30.10.2003)	If alumni managers are elected through a fair, open and transparent process, we do not think that it is necessary to restrict the age of their voters and nominees. In fact, most of the members of alumni associations are adults and it is very rare that a minor alumni member is a voter or is elected in the election of alumni managers.

Issues	Members'/Deputations' Concerns	Administration's Response
c. Recognition of an alumni association	Explain the criteria for an IMC to recognise an alumni association in case there are two or more alumni associations in a school. (30.10.2003)	If there is more than one alumni association in a school, the school should accept the one which is more/the most representative and recognised, taking into account the number of their members and year groups of alumni covered. Nevertheless, having taken into consideration Members' views, we shall amend section 40AN(3) to specify that unless the alumni association allows alumni of all year groups to join, the association shall not be recognised by the IMC.
15. Independent managers		
a. Appointing independent managers	The requirements of independent managers are too stringent and there should be more flexibility for their appointment. (Deputations' concern) Consider whether re-appointment of an independent manager should be subject to the restriction in proposed section 40AO(2)(b), i.e. a person shall not be nominated if he is the parent of a current pupil of the school. (30.5.2003)	Proposed section 40AO(2)(d) requires that independent managers shall not be parents, teachers or SSB members. The requirement is to ensure the "independent" status of independent managers. Should schools have difficulty in complying with the IMC composition after taking all reasonable steps, it can apply for exemption from PSEM. If an independent manager is also the parent of a current pupil of the school, the SSB may nominate him/her to be an SSB manager or he/she may choose to join the IMC as a parent manager.
b. Nomination of independent manager	Explain the meaning of "all reasonable steps" in complying with the requirements for nomination of an independent manager. (30.10.2003)	When the post of an independent manager is vacant, an IMC should take all possible measures to fill the vacancy. Apart from the usual procedure and making reference to measures of other IMCs, the IMC may approach professional organisations and EMB for assistance. If it has taken all these steps and still cannot find a suitable candidate to fill the vacant post, the IMC can base on these reasons and evidences and apply to PSEM for exemption from the requirement of an independent manager.

Issues	Members'/Deputations' Concerns	Administration's Response
<i>c. Tenure of office of an independent manager</i>	Examine whether the Bill should specify a time limit for a serving independent manager to vacate his office when he becomes a parent of a current pupil of the school. (30.10.2003)	If a child of the serving independent manager becomes a pupil of the school, his/her status of being an independent manager will be affected. The concerned independent manager shall serve to the end of his tenure or the school year (whichever is the earlier). We shall propose an amendment to reflect this arrangement in the Bill.
16. Implementation of SBM governance structure and supporting measures		
<i>a. Support for managers/schools</i>	<p>Elaborate on the support services which would be made available to parent managers for participation in the work of an IMC. (17.3.2003)</p> <p>Provide information on the support measures which has been and will be taken to assist serving managers, parents, teachers and other persons in acquiring the basic knowledge and skills in school operation and management during the transitional period. (21.11.2003)</p> <p>The Administration should brief serving and prospective IMC managers on the liabilities which are not covered under the current BIP. (5.12.2003)</p>	<p>Since the 2000/01 school year, EMB (and former Education Department) has been organising courses for managers and executive members of PTAs to enhance their understanding of SBM and the daily operation of schools. EMB will continue to organise these courses every year. Other categories of potential managers, including representatives of SSB, principals, teachers and independent managers will also be invited to attend.</p> <p>Apart from organising regular training courses, EMB also conducts thematic seminars on school management for serving managers. Furthermore, EMB has uploaded useful materials including a "School Administration Guide" and a booklet entitled "Responsibilities of School Managers" to its website for reference of managers. When the Bill is enacted, a "School Managers' Handbook" will be issued to help managers better perform their functions.</p> <p>After the passage of the Bill and during the transitional period, EMB will strengthen the systematic training, especially on legal liability, for serving and potential managers in order to meet their need.</p> <p>If the Bill is passed and the new legislation comes into effect, EMB will take the following supporting measures to help schools fulfill the requirements as soon as possible:</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<ul style="list-style-type: none"> i. Sample constitution, guidelines on election, training for school managers, etc. will be provided to schools; ii. New schools which were allocated school premises with effect from the School Allocation Exercise 1999 and have started operation will be assisted in establishing an IMC as soon as possible; iii. Schools which have incorporated their SMCs under the Companies Ordinance will be assisted in incorporating their SMC limited companies under the Education Ordinance; and iv. The District School Development Sections of EMB will provide support and assistance to individual schools to help them overcome any technical difficulties in complying with the requirements of the new legislation the soonest possible during the transitional period. EMB will also work with SSBs to resolve common problems encountered by schools under their sponsorship.
<i>b. Implementation strategies during the transitional period</i>	<p>Provide a timetable for implementing the SBM proposals in the Bill and the resource implications of the supporting measures to be provided to schools in the establishment of IMCs. (27.2.2003)</p> <p>Eelaborate on the Administration's measures proposed to be taken to prevent malpractices in school management during the five-year transitional period, as well as to facilitate implementation of the proposals in the Bill after the five-year transitional period. (18.9.2003)</p>	<p>During the transitional period, EMB will adopt measures to facilitate schools' implementation of the proposals in the Bill. Special attention will also be paid to schools with unsatisfactory performance to enhance their accountability and transparency.</p> <p>EMB will:</p> <ul style="list-style-type: none"> i. require these schools to draw up plans each year and, if necessary, submit periodic reports ii. provide professional support to help them improve their measures and monitor their progress to ensure that the problems can be resolved earliest possible iii. for schools in more serious situation, appoint in accordance

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>with Section 41 of the Education Ordinance additional managers to improve school operation</p> <p>iv. if appointing additional managers cannot improve the management of the school, replace all the existing managers to ensure normal operation of the school</p> <p>v. help schools which do not have a PTA in setting up a PTA</p> <p>Strategies and measures to implement the new governance framework during the transitional period</p> <p>After the enactment of the Bill, EMB will:</p> <p>i. require schools to pledge their own time frame for implementing the new governance framework</p> <p>ii. require schools to report their progress of establishment of IMCs annually</p> <p>iii. provide assistance to schools in the establishment of their IMCs</p> <p>iv. help those new schools that have incorporated their management committees under the Companies Ordinance to establish their IMCs as soon as possible</p> <p>v. require those new schools that have not incorporated their management committees under the Companies Ordinance to establish their IMCs within six months after the enactment of the Bill</p> <p>vi. negotiate with former SMI schools having an approved constitution to establish their IMCs according to a time frame.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>Other relevant measures</p> <ul style="list-style-type: none"> i. To develop relevant implementation guidelines such as a sample IMC constitution, election guidelines for parent and teacher managers and a School Managers' Handbook for schools' reference ii. To organise training programmes to help school managers better understand their own roles and responsibilities iii. To organise experience-sharing sessions to promote good practices under the new governance structure iv. To form a network of schools on a regional or sponsor basis so that schools can share their successful experiences in implementing the new governance framework v. To provide assistance in the election of parent/ teacher/ alumni managers if required vi. If necessary, to provide assistance to schools in identifying candidates as independent managers vii. The District School Development Sections of EMB will provide support and assistance to their respective schools to help them overcome any technical difficulties in complying with the requirements of the new legislation the soonest possible during the transitional period. EMB will also work with SSBs to resolve common problems encountered by schools under their sponsorship.
<p>c. Is SBM governance structure applicable to DSS schools?</p>	<p>Explain why Direct Subsidy Scheme (DSS) schools are not compulsorily required to establish an IMC and clarify whether the policy intent is to encourage SSBs which do not wish to establish an IMC to join the DSS. (30.10.2003)</p>	<p>Subsidies are provided to DSS schools by the government depending on the number of students the schools could recruit. Parents' voices are therefore influential. The "direct subsidy scheme" is a relatively new initiative. Thus, we suggest giving</p>

Issues	Members'/Deputations' Concerns	Administration's Response
		<p>more flexibility to DSS schools, allowing them to choose, according to their own situation, whether or not to establish the IMC under the Education Ordinance.</p> <p>The Government's policy is to foster the development of a strong DSS sector to inject more variety into the school system, and to provide more choices to parents. Schools may choose to join DSS, having regard to their own needs. The Government would not encourage schools to join DSS just because they do not wish to establish the IMC.</p>
17. Others		
<p><i>a. Two-tier/ multi-tier management structure of SMC</i></p>	<p>SSBs should be allowed to adopt a two-tier management structure with the first tier being the school management committee which comprises SSB representatives only and the second tier, an advisory body which allows parents and teachers to join. (Deputations' concern)</p>	<p>We consider that whether a school has a one-tier or multi-tier governance structure is not the issue. Rather, the issue is that all key stakeholders (SSBs, principals, parents, teachers, alumni and community members) should jointly participate in school decision-making in order to enhance the transparency and accountability of school governance.</p> <p>The SBM governance framework provides a forum for different views for the betterment of the school. Schools may, depending on their own circumstances, set up advisory bodies to advise on aspects of school operations or policies. However, the participation of parents and teachers in school management should not be restricted to the advisory level or to decision-making in certain domains only. Each school should have its own management committee comprising all key stakeholders. The management committee is responsible for making major school policies and managing the school.</p>

Issues	Members'/Deputations' Concerns	Administration's Response
<i>b. Whether non-teaching staff and professionals serving in aided schools are subject to the respective Codes of Aid</i>	Confirm whether non-teaching staff in aided schools are subject to the respective Codes of Aid for primary, secondary and special schools. (17.3.2003)	Aided schools may make use of an Administration Grant to employ administrative/clerical and/or janitor staff and contract out ancillary services according to their own needs. They decide the number, ranks as well as salaries and terms of service of these staff. For aided primary and special schools which opt for the Revised Administration Grant introduced in 1999 as a transitional measure, they have to follow the conditions of appointment of clerical staff set out in the Codes of Aid. EMB has no intention to withdraw or reduce such flexibility under the Administration Grant currently enjoyed by schools and the Bill is not going to change the provisions in the Codes of Aid.
	Confirm whether professionals and other persons serving in aided schools are subject to the Codes of Aid. (11.4.2003)	As need arises, aided schools will acquire professional services to handle tasks beyond the expertise of school staff, such as architects for repairs projects, geotechnical engineers for slope maintenance, and certified public accountants for auditing of school accounts. These are not staff employed in the school and they are paid service fees for the professional service they render in accordance with the terms of service contracts between them and the schools. Aided schools may also use the Operating Expenses Block Grant to employ temporary or part-time staff such as IT technicians, teaching assistants, etc. Nevertheless, such staff do not fall within the school's approved establishment or are considered as professionals under the Codes of Aid.
<i>c. Existing schools with their own Ordinances</i>	Explain whether and how the Administration would amend or repeal the Ordinance which governs an existing school and contains provisions in conflict with the Bill after the enactment of the Bill. (12.5.2003)	After the enactment of the Bill, we shall liaise individually with the aided schools which have their own Ordinances to examine whether they need to amend their own Ordinance in order to meet the new requirements.

(Note: Date in brackets denotes date of the Bills Committee meeting.)

**Transfer of Functions from Supervisor to the Chairperson of IMC
in the Education (Amendment) Bill 2002**

According to section 39(2) of the Education Ordinance, the main duties of supervisor are to give notice in writing to the Permanent Secretary within one month after the happening of the following events —

- (i) any person ceases to be a manager of the school;
- (ii) the supervisor ceases to perform the duties of the supervisor;
- (iii) the principal ceases to perform the duties of the principal;
- (iv) any teacher commences to teach or is employed to teach at the school;
- (v) any teacher ceases to teach or ceases to be employed to teach at the school;
- (vi) the supervisor becomes aware of a change in any particulars furnished under this Ordinance with respect to any landlord or tenant of the premises in which the school is operated.

After the enactment of the Education (Amendment) Bill 2002, the main functions of an IMC chairperson according to section 40AJ(1)(b) are to give notice in writing to the Permanent Secretary within one month after the happening of the following events —

- (i) any person ceases to be a manager of the school;
- (ii) the principal of the school ceases to hold office as such;
- (iii) any teacher of the school is employed to teach or commences teaching at the school;
- (iv) any teacher of the school ceases to hold office as such; or
- (v) there is a change in any particulars furnished under this Ordinance in respect of the tenancy of the school premises;

Also, according to section 40AJ(1), the other functions of IMC chairperson are to —

- (i) preside over the meetings of the committee;
- (ii) sign the statement of accounts of the committee;
- (iii) within one month of—
 - (a) the receipt or issue of a writ or other originating process (except one issued in proceedings in the Small Claims Tribunal within the meaning of the Small Claims Tribunal Ordinance (Cap. 338) and the Minor Employment Claims Adjudication Board within the meaning of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453)) by the committee; or
 - (b) the handing down of the judgment in the proceedings to which such writ or originating process relates, give notice of the event to the Permanent Secretary; and
- (iv) perform such functions as may be provided for in the constitution of the committee.

**Transfer of Responsibilities from Supervisor to IMC in
the Education (Amendment) Bill 2002**

A. Education Ordinance

The term “supervisor” is replaced with “management authority” in the following provisions. For an IMC school, “management authority” means “the IMC of the school”.

Section	Content
18(2)&(3)	<p>Certificate of registration or provisional registration</p> <p>(2) Except as provided in subsection (3), section 20 and section 71, the <u>supervisor</u> of a school shall cause the certificate or a copy issued by the Permanent Secretary under subsection (1) to be exhibited at all times in a conspicuous place in each of the premises specified in the certificate.</p> <p>(3) If the Permanent Secretary extends the period of provisional registration of a school under section 15(2), the <u>supervisor</u> shall within one month after the date when he is notified of the extension deliver the certificate of provisional registration and every copy of the certificate to the Permanent Secretary, who shall amend the certificate and the copies thereof accordingly and return them to the <u>supervisor</u>.</p>
18A(1)	<p>Approval of Permanent Secretary required for post secondary education</p> <p>(1) No <u>supervisor</u> of a school shall cause or allow post secondary education to be provided at the school unless he received the approval of the Permanent Secretary to do so.</p>
20(1)	<p>Change of premises</p> <p>(1) The <u>supervisor</u> of a school may apply in writing to the Permanent Secretary to amend the certificate of registration or provisional registration by ——</p> <p>(a) specifying in the certificate any additional or alternative premises; or</p> <p>(b) deleting from the certificate reference to any premises or to any part of any premises.</p>
21(2)& (3)	<p>Changes in design or use of premises increasing fire risk</p> <p>(2) If the Director of Fire Services delivers to the Permanent Secretary a notice under subsection (1) in respect of a school specifying any provision which the Director of Fire Services considers should be made by the school, the Permanent Secretary may by notice in writing served on the <u>supervisor</u> of the school require such provision to be made.</p> <p>(3) If the Building Authority delivers to the Permanent Secretary a notice under subsection (1A) in respect of a school specifying any provision which the Building Authority considers should be made by the school, the Permanent Secretary may by notice in writing served on the <u>supervisor</u> of the school require such provision to be made.</p>
49(1)(a)	<p>Application to employ permitted teacher</p> <p>(1) An application to employ a person as a permitted teacher in a school shall</p>

Section	Content
	<p>be made to the Permanent Secretary —</p> <p>(a) in the case of a school which is registered or provisionally registered, by the <u>supervisor</u>;</p>

B. Education Regulations

The term “supervisor” is replaced with “management authority” in the following regulations. For an IMC school, “management authority” means “the IMC of the school”.

Regulation	Content
15(1), (2) & (3)	<p>Periodic inspection of premises</p> <p>(1) The <u>supervisor</u> of any such school shall, at intervals not exceeding 3 years in the case of premises of reinforced concrete construction and at intervals not exceeding 12 months in the case of premises with timber floors, cause the premises to be inspected by an authorized person in order to determine whether the premises are in sound structural condition.</p> <p>(2) (a) Where, upon any inspection under paragraph (1), the authorized person is satisfied that the premises are in sound structural condition, he shall deliver to the <u>supervisor</u> of the school a certificate, in writing, that he is so satisfied.</p> <p>(b) The <u>supervisor</u> shall deliver such certificate to the Permanent Secretary.</p> <p>(3) Where, upon any such inspection, the authorized person is not satisfied that the premises are in sound structural condition, he shall, in writing, report the fact to the Permanent Secretary and shall notify the <u>supervisor</u> of the school thereof.</p>
44	<p>Improvements to sanitation</p> <p>The <u>supervisor</u> shall carry out such alterations and improvements to the sanitary arrangements in the school premises as may be required by the Permanent Secretary by notice in writing within a period specified in such notice.</p>
48(2)	<p>Cleaning and colour washing</p> <p>(2) The <u>supervisor</u> shall, if so required in writing by the Permanent Secretary, cause the whole or any part of the school premises to be suitably colour-washed or repainted.</p>

Regulation	Content
53(1)	<p>Infectious diseases</p> <p>(1) If a medical officer of schools certifies that any teacher, pupil, or employee should be excluded from school by reason of suffering or having recently suffered from any infectious disease or by reason of having been in contact with or living in the same house as a person suffering from an infectious disease, the <u>supervisor</u> shall, if so required in writing by the medical officer in charge of the school health services, cause such teacher, pupil, or employee to be excluded from school for such period as shall seem necessary .</p>
56(6)	<p>Boarding schools</p> <p>(6) The <u>supervisor</u> of every boarding school shall, if so required by the Permanent Secretary in writing, appoint a warden to be in charge of the boarders.</p>
60	<p>Submission of particulars of inclusive fees</p> <p>The <u>supervisor</u> of every school shall submit to the Permanent Secretary when required by him particulars of the inclusive fee.</p>
61(1)	<p>Fees other than inclusive fee prohibited</p> <p>(1) Subject to regulation 99A and to paragraph (2), no <u>supervisor</u>, manager or teacher shall charge or accept payment of any money or any school fees whatsoever other than the inclusive fees as printed on the certificate issued under regulation 60A(1)(ii):</p> <p>Provided that additional charges, moneys or fees (including entrance examination fees and pupil registration and withdrawal fees) may be charged if previously approved by the Permanent Secretary in writing and if such approval is kept exhibited together with the certificate kept exhibited under regulation 67.</p>
62(2)	<p>Method of payment</p> <p>(2) Notwithstanding paragraph (1), a <u>supervisor</u> may require a pupil to register for an educational course by paying the first monthly instalment not earlier than one month before the commencement of the educational course.</p>
63	<p>Formal receipts</p> <p>The payment of every sum of money by or on behalf of a pupil to a <u>supervisor</u>, manager or teacher shall be forthwith acknowledged in writing by such <u>supervisor</u>, manager or teacher on a proper form of receipt.</p>
64	<p>Accounts</p> <p>The <u>supervisor</u> of every school shall ——</p> <p>(a) keep proper accounts;</p> <p>(b) make the accounts and any vouchers relating to the accounts available at all reasonable times for inspection by the Permanent Secretary or any inspector of schools; and</p> <p>(c) retain the accounts and vouchers for a period of not less than 7 years.</p>

Regulation	Content
77	<p>Appointment of teachers</p> <p>The <u>supervisor</u> shall be responsible for issuing to all teachers letters of appointment which shall set out ——</p> <p>(a) conditions of service;</p> <p>(b) salary scale; and</p> <p>(c) conditions of termination of appointment.</p>
78	<p>Salaries of teachers</p> <p>The <u>supervisor</u> shall be responsible for ensuring that the salaries of all teachers are paid in full when due.</p>
91(2)	<p>Equipment and educational facilities</p> <p>(2) The Permanent Secretary may give directions in writing to the <u>supervisor</u> of any school providing nursery, kindergarten, primary, secondary or post-secondary education or any other educational course that the school shall be provided with any such apparatus, equipment, teaching materials or general facilities as may be specified by the Permanent Secretary in such directions.</p>
94	<p>Information to be given concerning school and pupils</p> <p>The <u>supervisor</u> shall submit to the Permanent Secretary, whenever required by the Permanent Secretary, such information concerning the school or pupils thereof as may be required by the Permanent Secretary.</p>
98(2)	<p>Prejudicial activities</p> <p>(2) The Permanent Secretary may give directions in writing or other guidance to the <u>supervisor</u> of any school as to the dissemination of information or expression of opinion of a political nature in that school, so as to ensure that that information or opinion is unbiased.</p>
99A(2)	<p>Business or trading operations</p> <p>(2) Where permission has been granted for the purposes of paragraph (1), the <u>supervisor</u> of the school shall ——</p> <p>(a) within 4 months after the end of the financial year of the school, or such extended period as may be permitted by the Permanent Secretary, furnish to the Permanent Secretary an annual audited statement of accounts of every such business or trading undertaking, or business or trading arrangement; and</p> <p>(b) furnish together with such statement of accounts a statement indicating how the profits have been applied or are intended to be applied.</p>

**Transfer of Responsibilities from Supervisor to Principal in IMC Schools
in the Education (Amendment) Bill 2002**

Education Regulations

The term “supervisor” is replaced with “responsible person” in the following regulations. For an IMC school, “responsible person” means “the principal of the school”.

Regulation	Content
3	Supervisor to furnish plan of school premises The <u>supervisor</u> of every school shall on demand supply the Permanent Secretary with a plan or diagram, with dimensions, of the school premises.
20	Limitation of activities on roof playgrounds If any roof playground, verandah or balcony is used in contravention of these regulations, the Permanent Secretary may by notice in writing addressed to the <u>supervisor</u> prohibit the use thereof until such time as he may specify in such notice.
21(1)	Safety precautions (1) The <u>supervisor</u> shall ensure that all necessary safety precautions are adopted in school workshops and science laboratories and shall modify or extend those precautions as the Permanent Secretary may require.
23	Plan of layout Wherever it is desired to install any machinery or machine tools in a school workshop the <u>supervisor</u> shall submit to the Permanent Secretary a plan of the proposed layout of the workshop.
52(2)	Medical examination of pupils (2) If on such examination a medical officer of schools is of the opinion that the person or clothing of any pupil is infected with vermin or is in a foul or filthy condition, he may require the <u>supervisor</u> to exclude such pupil from the school forthwith until such time as the person and clothing of pupil have been cleansed to the satisfaction of a medical officer of schools.
57(1)	Medical examination in boarding schools (1) The <u>supervisor</u> of every boarding school shall ensure that every pupil who desires to become a boarder at that school shall be medically examined before he is admitted to that school as a boarder.
79	Notice of school holidays The <u>supervisor</u> shall send to the Permanent Secretary before 15 August in each year notice of all holidays it is intended to give in the coming school year,

Regulation	Content
	including any special holidays given in honour of any particular event, and of all dates on which the usual work of the school will be suspended.
82	Permanent Secretary may require grant of holiday The Permanent Secretary may by notice in writing to the <u>supervisor</u> of any school require that a holiday shall be given on any day specified in such notice and the <u>supervisor</u> shall ensure that such holiday is given accordingly.
89(2)	Hours of instruction (2) No instruction shall be given by any school during such hours as may be specified by the Permanent Secretary in respect of that school by notice in writing to the <u>supervisor</u> .
92(2), (3), (10) & (12)	Syllabus and time-table subject to approval of Permanent Secretary (2) The <u>supervisor</u> of every school shall submit to the Permanent Secretary whenever so required by the Permanent Secretary the syllabus of instruction of each class or any other document he may specify for his approval. (3) The Permanent Secretary may give directions in writing to the <u>supervisor</u> of any school as to the instruction which shall be or shall not be included in any such syllabus. (10) The Permanent Secretary may give directions in writing to the <u>supervisor</u> of any school in respect of the time-table of work of any class and may require any <u>supervisor</u> to submit for his approval any such time-table. (12) The <u>supervisor</u> shall inform the Permanent Secretary of any change in the hours of school work.