

Bills Committee on Education (Amendment) Bill 2002
Administration's Response to the proposed amendments to the Bill raised
by Members at the Bills Committee Meeting on 3 March 2004

Purpose

This paper gives our response to the following four proposed amendments to the Education (Amendment) Bill 2002 (the Bill) raised by Members at the Bills Committee meeting on 3 March 2004:

Proposal I : to delineate clearly the powers between the school sponsoring body (SSB) and the Incorporated Management Committee (IMC) in handling school assets and properties, loans, fund-raising and contracts

Response

2. It is provided in proposed section 40AE that the IMC may:
 - i. take on lease, purchase or otherwise acquire, and hold, manage and enjoy property of any description, and sell, let or otherwise dispose of the same (40AE(2)(a))
 - ii. borrow money in such manner and on such security or terms as may be expedient (40AE(2)(f))
 - iii. solicit and receive gifts or donations, whether on trust or otherwise, and act as trustee of moneys or other property vested in it on trust (40AE(2)(h))
 - iv. enter into any contract, agreement or arrangement (40AE(2)(i))
3. We accept the proposal and will suggest amendments to clearly define that the IMC can only handle the government subsidies in the capacity of a trustee. In acquiring loans or raising funds, the IMC must obtain the prior consent of the SSB. As for contracts, agreement or arrangement involving non-government funds, the IMC must also seek the prior consent of the SSB.

Proposal II : to designate the chairperson of the IMC as the supervisor

Response

4. We accept the proposal and will amend the Bill accordingly.

Proposal III : in the selection of principal, (i) empower the SSB to nominate the principals subject to the endorsement of the IMC or (ii) provide the SSB with the power of veto in the appointment of the principal of an IMC school

Response

5. In principle, we accept proposal (i) and will suggest amendments to proposed section 57A to specify that both the SSB and the IMC could nominate candidates to the principal selection committee. The candidates have to go through the proper selection process conducted by the committee. The IMC would then nominate the selected principal candidate to the Permanent Secretary for Education and Manpower (PSEM) for approval.

Proposal IV : to provide schools with more flexibility in the implementation of the proposed governance structure; or to further extend the transitional period

Response

6. The proposal violates the principles of our proposals in the Bill. We cannot accept it.

7. Since 1991 when the School Management Initiative Scheme was introduced, school-based management (SBM) has been promoted for more than ten years. Schools have been devolved with greater autonomy in operation, including the appointment and promotion of teachers and deployment of resources for long-term planning. We therefore need to provide a more comprehensive school governance framework through legislation in order to increase participation in decision-making and enhance the transparency and

accountability in school management.

8. The proposed governance framework only requires the IMC to include one (or more) teacher manager and one (or more) parent manager, which is only a minimum requirement. Not violating this minimum requirement, schools may, according to their own situation and needs, make other arrangements, including the formation of advisory committees to assist the IMC to manage the different areas of school work.

9. In view of the different progress among schools in implementing SBM, we have proposed in the Bill a 5-year transitional period to allow schools to set up the IMC according to their own pace. When the Advisory Committee on School-based Management put up recommendations to the Administration, it had already extended the transitional period from the originally proposed three years to five years. A period of five years is a very reasonable time limit and we, therefore, would not consider further extending the transitional period.

Other proposed amendments

10. We will also suggest the following amendments to the Bill to address the other concerns of the SSBs and Members of the Bills Committee:

(i) Sections 18A and 87 and regulation 101

To provide 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.

(ii) Section 31

To provide that if a manager is absent from all IMC meetings in a school year without obtaining the consent of the IMC, the IMC may request PSEM to cancel his registration.

(iii) Proposed new section 40AE

To specify 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.

(iv) Proposed new section 40AI

To provide that if a chairperson is unable to perform his duties during a period of not less than 28 days due to absence from Hong Kong or illness, the SSB may appoint a manager or the other managers shall elect among themselves a manager to act as the chairperson during the period.

(v) Proposed new sections 40AK and 40AQ

To provide that the SSB of any school may, according to the provisions of the IMC constitution, nominate a person to be registered as alternate sponsoring body manager. When any one of the SSB managers is absent from an IMC meeting, the alternate sponsoring body manager can have voting right.

(vi) Proposed new section 40AM

To provide that parents of all current pupils of a school have the right to vote and be elected in the election of parent managers.

(vii) Proposed new section 40AN

To provide that an alumni association should open its membership to all alumni of the school before it can be recognised by the IMC.

(viii) Proposed new section 40AO(2)(d)

To provide that a person shall not be nominated as an independent manager of the school if he is a member; the spouse or parent or a child of a member; or an employee of the governing body (however described) of the sponsoring body of the school.

(ix) Proposed new section 40AP

To provide that the first parent manager and the first alumni manager of the school shall be registered as such at any time within 3 months from the establishment of the IMC.

(x) Proposed new section 40AT

To provide that if in a school year an independent manager becomes a teacher of the school; the parent of a current pupil of the school; a member; the spouse or parent or a child of a member; or an employee of the governing body of the school, his term of office as a manager shall continue until its expiry or the end of the school year, whichever is the

earlier.

(xi) Proposed new section 40BG

To specify that any claim for compensation of civil liabilities should be enforced against the IMC to the exclusion of individual school managers.

(xii) Proposed new section 57A

To specify that the representative of the IMC in the principal selection committee should be a manager of the school; and PSEM may on an application by the SSB or the IMC of a school with good cause, consider granting exemption to the requirement of a principal selection committee.

(xiii) Section 60

To specify that an SSB may lodge an appeal to the Appeals Board on PSEM's decision on the subsequent amendments to the IMC constitution.

(xiv) Proposed new section 75A

To state explicitly that the IMC chairperson can be directly appointed by the SSB or elected among the managers.

11. Apart from the proposed amendments listed above, we will also propose more than 20 other technical amendments, which will be put up later for scrutiny by the Bills Committee.

Education and Manpower Bureau
March 2004