

**Response to Issues related to the
Education (Amendment) Bill 2002**

Purpose

This paper sets out the Administration's response to-

- (a) the issues in relation to the Education (Amendment) Bill 2002 raised by Members of the Bills Committee at the meetings held on 17 and 27 March 2003; and
- (b) the issues raised in the written submissions and by deputations.

A. Issues raised by Members of the Bills Committee

Power of Incorporated Management Committee (IMC) in staff matters

2. We are considering the proposal for improving proposed section 40AE(2)(b) 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. Please refer to paragraph 8 of LC Paper No CB(2)1570/02-03(04).

3. The Administration was asked to confirm whether non-teaching staff in aided schools were also subject to the respective Codes of Aid. Aided schools 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. Thus, administrative/clerical and janitor staff in aided schools are not subject to the Codes of Aid. However, aided primary and special schools which opt for the Revised Administration Grant introduced in 1999 as a transitional measure have to follow the conditions of appointment of clerical staff set out in the Codes of Aid. The Education and Manpower Bureau (EMB) has no intention to withdraw or reduce such flexibility currently enjoyed by schools and the Bill is not going to change the provisions in the Codes of Aid.

Power of school sponsoring bodies (SSB) to dissolve IMC

4. The Administration was asked to clarify whether SSBs could be empowered by way of appropriate provisions in IMC constitution to dissolve an IMC which failed to perform its functions or operate in the light of the vision and mission set by SSB; and if yes, whether an appeal mechanism would be put in place for IMC managers to appeal against such decision.

5. Proposed section 40AV provides that SSB may make a written request to IMC to issue a notice to the Permanent Secretary for Education and Manpower (PSEM) to cancel the registration of SSB managers. SSB may specify in the IMC constitution its authority to appoint the IMC chairperson. In fact, SSB will be able to steer the decision-making in IMC through its SSB managers who make up to 60% of the total membership of IMC. In addition, SSB may specify in its own constitution the duties, nomination and cancellation of registration of SSB managers. Proposed section 40AD also sets out that SSBs shall give general directions to IMC in the formulation of education policies of the school; IMC shall ensure that the mission of the school (set by SSB) is carried out; and IMC is accountable to PSEM and SSB for the performance of the school. Hence, there are adequate measures for SSB to ensure that managers and IMCs perform their functions satisfactorily. We do not consider it necessary for SSB to have the power of dissolving an IMC.

Resolving conflict between SSB and IMC

6. Some Members expressed concern about how the Administration would resolve a conflict between SSB and IMC when they held different educational ideals and were not cooperating to work towards achieving the vision and mission set out in the IMC constitution.

7. Since SSB is to draft the IMC constitution and its representatives may make up to 60% of IMC, SSB should be able to steer IMC. With the inclusion of key stakeholders, the operation of IMC will become open and transparent. If there are conflicting views in discussions and members cannot come to terms, they should always refer to the school's vision and mission and act in the interests of the students. If necessary, PSEM may give directions to IMC.

Nomination, election and terms of office of IMC managers

8. The Administration was asked to 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.

9. 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 constitution of IMC has to provide, among other things, for the number of each category of managers, the procedures for nominating or electing managers 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 the principles and related arrangements.

Powers of school principal and role of supervisor

10. Some Members queried whether there would be any check and balance of the powers of principals in the day-to-day administration of IMC schools. Proposed section 58(1) stipulates that the principal shall be subject to the directions of IMC in carrying out his responsibilities. Besides, an enhanced mechanism for transparency and accountability of school operation is in place under school-based management (SBM). Apart from reporting progress to IMC, the principals have been advised in an EMB circular to make available school plans, school reports etc. for the perusal of parents, teachers and even members of the public in order to enhance the transparency and accountability of school management. In fact, schools may assign the IMC chairperson or any other IMC member to supervise the work of principals.

11. The Administration was also asked to re-consider the role and functions of supervisors in supervising the principal's work. Schools in fact have the discretion to retain the post of supervisor according to their own needs. In such case, SSB should set out the duties of the supervisor in the IMC constitution, such as monitoring the day-to-day operation of the school or serving as a conduit between IMC and the principal. However, IMC will be accountable for all the decisions made.

Selection and appointment of principal

12. Some Members were concerned about the requirement to establish a principal selection committee in IMC schools and the criteria of granting exemption from such requirement.

13. The principal selection committee shall be composed of representatives of SSB, IMC and such other persons provided for in the IMC constitution. It has the collective skill to choose the best leader for 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 her satisfaction, exempt any IMC from the requirement. Such good cause may include operational needs to deploy principals among sponsored schools in the case of class reduction.

Implementation of School-based Management

14. Some Members asked about the justifications for establishing a statutory framework for implementation of SBM. We have confirmed that enacting the Bill to give legal backing to the SBM framework is required. Please refer to paragraph 3 of LC Paper No. CB(2)1570/02-03(04).

Composition of IMC

15. Some parent-teacher association (PTA) deputations suggested that parent managers should comprise a higher percentage of IMC membership, say not less than 30%. The Advisory Committee on School-based Management (ACSBM) had 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 school management committees (SMCs) comprising members mainly appointed by SSBs. ACSBM also recognised the need for an incremental approach to change time-honoured practices. Thus, after balancing the interests and concerns of different parties, it 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.

Support to parent managers

16. Some Members were concerned about training and support provided for managers. The staff of EMB will offer professional advice and support to managers to help them comply with the new legislation. To enhance managers' understanding of their roles and functions, training courses consisting of five to six sessions each are being organised for managers on an on-going basis. The target participants include serving and new managers as well as potential managers like executive members of PTAs. Thematic experience-sharing sessions are also organised for managers.

17. School managers can find information and reference materials on school-based management on the website of EMB. We have also published a "School Administration Guide" and a booklet entitled "Responsibilities of School Managers" for references of managers. When the Bill is enacted, a "School Managers' Handbook" will be issued to help managers better perform their functions.

Election and nomination of parent managers in case there are more than one parent association

18. 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. We have no record of schools having more than one PTA.

19. Some deputations raised the issue of possible conflict in the recognition of a PTA for the purpose of making nomination of parent managers if there were more than one PTA in the school. Proposed section 40AM(1) provides that IMC is the authority to recognise a PTA for the purpose of making parent manager nomination.

Distribution of powers between IMC chairperson and supervisor

20. 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 management committee and EMB - a role very similar to the proposed role for the IMC chairperson.

21. EMB noted deputations' view that the existing supervisor played an important role in school management, e.g. serving as a conduit among various parties and a check on the principal's power. Schools are free to retain the post of supervisor, if deemed 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 IMC the existing duties of the supervisor. Nevertheless, under any circumstances, IMC is responsible for managing the school. It shall be held accountable for the decision-making and performance of the school.

22. Proposed section 58(1) stipulates that the principal shall be subject to the directions of IMC in performing his/her functions. Subject to the provisions of the Education Ordinance and the Codes of Aid, the detailed arrangements for the supervision of the principal could be set out in the IMC constitution.

B. Issues raised in Written Submissions and by Deputations

Governance Structure

23. Some deputations queried why SSBs were not allowed to adopt a two-tier governance structure as recommended in the Education Commission Report No 7. SBM promotes participatory governance which aims to enhance transparency and accountability in school management and provide a forum for different views for the betterment of the school. Under the spirit of SBM, each school should have its own management committee comprising all key stakeholders and is responsible for major school policies and decisions. Schools may adopt a two-tier or multi-tier governance structure by establishing advisory bodies in the school.

24. With the implementation of SBM in all public sector schools, both new and existing schools have been devolved more responsibilities and autonomy and enjoy increased flexibilities in the use of public funds. As a result, they should be more transparent and accountable in school management and the proposed governance structure should be applicable to all aided schools.

IMC Composition

Parent Managers

25. Some deputations proposed two parent managers in IMC for continuity sake. If IMC has two parent managers (and probably also two teacher managers), SSBs will need to secure more SSB managers to maintain a 60% majority. As a result, the size of IMC will become unwieldy to operate efficiently.

26. Parent manager(s) shall work together with other managers as a whole for the interests and benefits of students and the school. Despite the sectors they come from, managers serve on IMC in their personal capacity and they shall be accountable to IMC instead of their respective constituencies. Regarding an enquiry on how parent managers should report their work or collect views of parents, individual PTAs may set this out in their constitutions.

Alumni managers

27. Concern was expressed on the difficulty of new schools and primary schools in nominating alumni managers. Deputations suggested that flexibility should be allowed for independent managers to take up their places. The Bill already allows for flexibility in the composition requirements. Proposed section 40AP(5) empowers PSEM to grant exemption if IMC has taken all reasonable steps to secure compliance of the composition requirement. This covers genuine difficulty encountered by new schools and primary schools in having alumni manager. Unfilled alumni manager posts need not be filled by additional independent managers. Besides, the Bill does not set any restriction on the maximum number of independent managers in IMC.

Independent managers

28. Deputations considered the requirements of independent managers too stringent and requested more flexibility for their appointment. Proposed section 40AQ(2) requires that independent managers shall not be parents, teachers or SSB members. The requirement is to ensure that independent managers are distinct from other categories of managers in IMC. Should schools have difficulty in complying with the IMC composition after taking all reasonable steps, it can apply for exemption from PSEM.

Alternate managers

29. Deputations expressed concern on the role, status and voting right of alternate managers. The requirement on alternate parent manager or alternate teacher manager applies to IMCs having only one parent or teacher manager respectively. The alternate manager plays the same role and enjoys the same rights as the regular manager save for voting right. The alternate manager will be entitled to vote when the regular manager cannot attend IMC meetings. The arrangement allows continuity and collegiality while avoiding the size of IMC becoming unwieldy.

30. As set out in proposed section 40AH(4) that an alternate manager shall not be counted in the calculation of IMC composition, his/her attendance will therefore not change the percentage of SSB managers in IMC.

31. As SSB managers are already the majority in IMC, the provision for alternate SSB managers is not necessary. The provision of alternate managers is not an arrangement for proxy.

Powers of SSB

32. Regarding the concern that SSB's power is not clearly defined in the Bill to enable it to perform its functions, proposed section 40AD already sets out the functions of SSB, including its power to oversee IMC's performance and stipulates that IMC shall be accountable to PSEM and SSB for the performance of the school. SSB can exert its influence in IMC through its representatives who may make up to 60% of IMC.

33. SSBs are worried about the risks and losses a school may incur under proposed section 40AE(2) which provides that IMC may take on lease, purchase or otherwise acquire properties, borrow money, invest its funds or enter into any contract. They suggested that they should be allowed to restrict such power of IMC in the IMC constitution.

34. Proposed section 40AE(3) already stipulates that the exercise of these powers of IMC shall be subject to (in the case of aided schools) the Codes of Aid, and any direction given by PSEM under proposed section 40CC. Restriction has already been imposed on aided schools, e.g. they are not allowed to borrow

money or invest government funds in high-risk investment.

Role of principal

35. Principals were worried that they would be placed in a difficult position under the new governance structure as they had to mediate among managers who came from different sectors and might hold very different views. Being a key administrator, a professional and a leader of the school, the principal should be able to promote a collaborative school climate. EMB will also provide support to schools in the transformation, including training for managers.

36. There was concern that principals might not be ready to take up the responsibilities transferred to them from the supervisor. The responsibilities to be transferred to the principal are mainly operational matters, e.g. to submit to PSEM plans of school premises, syllabuses, time-table and school holidays list. Such duties are currently carried out by the principals in practice and they fall within the principals' professional expertise and responsibilities.

Liability of IMC managers

37. It was suggested that IMC managers should be offered greater protection to ensure immunity from litigation as legal proceedings would incur expenditure on the part of individual managers.

38. An IMC manager is accorded greater protection against legal liabilities in the Bill. Proposed section 40BG sets out that a manager shall not incur any civil liability in respect of anything done or is omitted to be done in the performance of his functions as a manager if he acts in good faith. Proposed section 87(10) and regulation 101(9) provide for a defence to a criminal charge if he proves that the provision was contravened without his knowledge or consent. Hence, the Bill provides much enhanced protection for individual managers as compared to the existing arrangement.

39. 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.

Insurance coverage for liability

40. Some deputations opined that the Government should arrange insurance to cover managers' liability. Legal liabilities of individual managers in the discharge of their manager duties are protected under proposed section 40BG provided that they act in good faith. Besides, the Government has arranged a Block Insurance Policy for all aided schools, which provides coverage for Employees' Compensation, Public Liability and Group Personal Accident. If necessary, IMCs might arrange insurance on their own to cover any other liabilities.

IMC Constitution

41. Some deputations commented that the constitution should not be subject to PSEM's approval and asked for the criteria to be adopted by PSEM in approving the IMC constitution. In order to ensure that provisions in the Education Ordinance are complied with, proposed sections 40BK and 40BV provide that PSEM shall approve or refuse to approve a draft of an IMC constitution. According to proposed regulation 75A(1) of the Education Regulations, PSEM shall not approve a draft constitution unless she is satisfied that the operation of IMC in accordance with the constitution is likely to be satisfactory. She may refuse to approve the constitution if it does not provide for the items listed in proposed section 75A(2), for example, the number of each category of managers, the procedures for nominating or electing persons for registration as managers, the appointment or election of a manager to be or to act as the chairperson, the secretary and the treasurer, etc. According to proposed section 60(1), SSB may lodge an appeal to an Appeals Board against the decision of PSEM under proposed sections 40BK and 40BV.

42. To facilitate SSBs in drawing up the IMC constitution, EMB will provide a sample IMC constitution for their reference.

43. Deputations also enquired how to handle a situation when it was the chairperson who should vacate office but refused to issue a written notice to PSEM, and whether contingency measures could be provided for in the IMC constitution. 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, 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 the majority of managers or a written notice to PSEM signed by the majority of managers.

Requirements of managers

Absence from IMC meetings

44. Some deputations suggested that it should be mandatory for a manager who had been absent from three consecutive IMC meetings or for a school year (as some schools might have only two meetings a year) to resign automatically.

45. For effective school management, IMC should hold at least three meetings a year. EMB would consider including “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.

Minimum qualification of managers

46. Some deputations suggested that in view of the great responsibility of school managers, apart from parent managers, other managers should have a minimum qualification of secondary education and at least one third of the managers in IMC should hold post-secondary qualification.

47. The ACSBM considers that any qualification requirements may discourage people from serving on SMCs, especially those who are devoted to education but have not received the required minimum qualification. Setting different qualification requirements for different categories of managers may be discriminatory and divisive.

Support/training for managers

2-day paid leave for parent managers

48. Some deputations suggested that employers should be required by legislation to give 2-day paid leave to their employees who were parent managers. The suggestion has far-reaching implications. Furthermore, 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.

Training for managers

49. There were concerns that some managers were not serious about receiving school manager training. It was therefore suggested that they be asked to sign an agreement before attending training or be qualified to serve as school managers only after they had attained certain targets or standard in the training.

50. Since most school managers attend training courses on a voluntary basis in their own time, it is therefore quite inappropriate to require them to sign any agreement on the training requirements. Besides, setting any standard or licensing requirements on the training would put undue pressure on managers who contribute their time and efforts to school governance. At present, managers who have attended 80% of a five to six half-day manager training course will be issued an Attendance Certificate which serves as a recognition of their fulfilling certain training requirements. EMB will ensure that quality will be maintained in the training courses for managers.

Education and Manpower Bureau
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