

Administration's Response to Issues Raised at the Meeting 5, 12 and 19 May 2004

Issues	Members' Concerns	Administration's Response
<i>Proposed section 40AS - Filling of vacancies to maintain full composition</i>	<p>Consider extending the period for an incorporated management committee (IMC) to forward to PSEM an application of a qualified person to fill the vacancy in the office of a manager from one to three months. (5.5.2004)</p> <p>Review the mechanism or procedures for an IMC to maintain full composition if a qualified person is not nominated to fill a vacancy within a period of three months. (5.5.2004)</p>	<p>Taking into account that an IMC might not be able to nominate or elect a qualified person to fill the vacancy of a manager within one month, we shall propose to amend section 40AS(2) by extending the period of filling the vacancy to three months.</p> <p>If an IMC could not nominate a qualified person to fill the vacancy of a manager within three months, it could apply to PSEM for further extension of the period for filling the vacancy in accordance with section 40AS(3). At the same time, section 40AG(c) has set out that the validity of a contract entered into by an IMC shall not be affected even if the IMC fails to maintain full composition.</p>
<i>Proposed section 40AW - Constitution of IMC</i>	<p>Set out the criteria for approval of an IMC constitution by PSEM. (5.5.2004)</p>	<p>PSEM will approve an IMC constitution according to the following criteria:</p> <ul style="list-style-type: none"> (i) no contravention of the Education Ordinance or other laws of Hong Kong; (ii) will enable the school to operate smoothly; and (iii) has provided for the issues set out in proposed regulation 75A, including: <ul style="list-style-type: none"> (a) the number of each category of managers in the composition of the IMC;

		<ul style="list-style-type: none"> (b) the procedures for nominating or electing persons for registration as managers; (c) the procedures for making a request to PSEM under section 40AV of the Ordinance for the cancellation of the registration of any manager; (d) the appointment or election of a manager to be or to act as the supervisor, the secretary and the treasurer; (e) the duties of the supervisor, the secretary and the treasurer; (f) the tenure of office of a manager; (g) the procedures for appointment of members of the principal selection committee; (h) filling the vacancy in the office of a manager; (i) matters relating to re-nomination or re-election of a manager; (j) the appointment of an auditor; (k) meetings and proceedings of the IMC; or (l) the procedures for amending the constitution.
<i>Proposed section 40AY - PSEM's nominee may attend meeting</i>	Specify the justifications for PSEM to nominate persons to attend IMC meetings under section 40AY(1), and review the need for the section having regard to the existing powers of PSEM to intervene in the management of a school under section 41. (5.5.2004)	The Bill proposes that PSEM may nominate a public officer to attend an IMC meeting if it appears to him that the attendance will be conducive to the operation and performance of the school. The representative is not an IMC member and does not have the right to vote. The purpose of the proposal is to assist the school and offer advice when necessary, which will not affect the decisions

		of the IMC. Therefore, we consider that it is necessary to retain this provision.
<i>Proposed section 40BF - Register of interests</i>	Consider allowing public access to the register of declarations and disclosures made by IMC managers under sections 40BD and 40BE respectively. (5.5.2004)	Taking into consideration that the information declared or disclosed by an IMC manager may be of a personal nature, we propose not to allow public access to the relevant register of interests. However, individual IMCs can determine whether or not to set out such provision in its IMC constitution.
<i>Proposed section 40BQ - Transitional provisions for dissolution of school management company Schedule 2</i>	Notify schools with school management companies the effect of the proposed Schedule 2. (19.5.2004)	We have issued letters to notify the schools concerned and seek their comments, but no response has yet been received.
<i>Proposed section 40BR - Failure to establish IMC</i>	Clarify the circumstances falling under section 40BR(1)(b). (19.5.2004)	Section 40BR(1)(b) sets out that if PSEM refuses to issue a certificate of incorporation under section 40BM in respect of a school, he may terminate any agreement between the Government and the sponsoring body (SSB) in relation to the sponsorship, subsidization, management and operation of the school. PSEM would determine whether to approve the IMC constitution and the list of proposed managers under sections 40BK and 40BL in accordance with the following criteria: (i) no contravention of the Education Ordinance or

		<p>other laws of Hong Kong;</p> <p>(ii) comply with the provisions related to the IMC constitution and composition under the Education Ordinance; and</p> <p>(iii) will enable the school to operate smoothly.</p>
<p><i>Proposed section 30 - Grounds for refusal to register manager</i></p>	<p>Review and specify the criteria for refusal to register an applicant as a manager under section 30. (12.5.2004)</p> <p>Review whether it is reasonable to refuse to register an applicant as a manager on the ground of “not a fit and proper person” stipulated in section 31(1)(b). (19.5.2004)</p> <p>With regard to the provisions related to a “fit and proper person” in other laws of Hong Kong, analyses the application of such provision and whether it is applicable to the elected persons. (19.5.2004)</p>	<p>We have reviewed the existing provisions in law related to “a fit and proper person” and found that they can be generally grouped under the following five categories:</p> <p>(i) related to registration, approval or recognition;</p> <p>(ii) related to permit or licence;</p> <p>(iii) related to authorization;</p> <p>(iv) related to appointment; and</p> <p>(v) related to disciplinary action or serving notice.</p> <p>Under the Education Ordinance, the provision related to “a fit and proper person” is applicable to section 30(1) which deals with the application for registration as a manager. Therefore, the applicability of such provision is similar to other laws.</p> <p>Though we have not found cases that such provision is applied to elected persons, we are of the view that the electors may not grasp all the information to confirm whether an elected person is “fit and proper” by the time they vote. For instance, the electors may not know the health condition of the elected person and whether he has</p>

		<p>contravened any criminal laws or committed professional misconduct. To safeguard the overall benefits of students, we consider that it is necessary to retain such provision in order to ensure that there would be a proper person to exercise the power that the Government devolves to an IMC.</p>
	<p>If a person who has attained the age of 70 years or above can provide a medical certificate to prove his health condition when he applies for registration as a manager, can he be registered? (19.5.2004)</p> <p>Review whether it is reasonable to refuse to register an applicant as a manager on the ground that 'the applicant has attained the age of 70 years' stipulated in section 30(1)(d). (19.5.2004)</p>	<p>When a person who has attained the age of 70 applies for registration as a manager, apart from a medical certificate to prove his health condition, he also has to prove that he has not contravened any of the conditions stipulated under section 30(1) before he can be registered as a manager.</p> <p>The provision of submitting a medical certificate is applicable to IMC schools only. Managers of non IMC schools are not restricted by this provision. Therefore, we consider that it is necessary to retain section 30(1)(d) in order to ensure the quality of registered managers. On the other hand, since we have accepted Members' proposal to set the lower age limit of managers at 18 years, it is reasonable to retain an upper age limit at 70 years.</p>
<i>Proposed section 40BM – Incorporation</i>	<p>Explain the policy intent of section 40BM(4) which specifies that no compensation would be payable to any person who ceases to be a supervisor or manager by virtue of the operation of section 40BM. (12 May 2004)</p>	<p>Currently the nomination of a manager has to be endorsed by the majority of the management committee. However, the Bill allows the SSB to submit a list of the proposed managers of the school when it sets up an IMC. To avoid leading to disputes, section 40BM(4) is added to prevent</p>

		some existing SMC members from claiming compensation because of not being nominated by the SSB to be managers of the IMC.
<i>Proposed section 40BO Transitional provisions for establishment of incorporated management committee</i>	Examine the impact on a school and its contractors or service providers in respect of the validity of their existing contracts or agreements, and consider whether the Bill should provide for the continuance of these contracts or agreements. (12 May 2004)	<p>We have conducted a sample survey of schools sponsored by different SSBs. Their contracts or agreements can be classified into government-funded contracts and non-government-funded contracts. The contract term in most cases is one year and they are mainly signed by the supervisor or the principal while a few are signed by the SSB. The government-funded contracts mainly relate to employment, services and supply of materials for school use, while the non-government-funded contracts mainly relate to services and various trading operations within the school. Please refer to Appendix I for details of an analysis of the relevant contracts.</p> <p>After the establishment of the IMC, the prime concern for the transfer of contracts should be fairness and smooth school operation. Therefore, we propose that all the contracts involving government funds, which are signed by the supervisor, the principal, managers or SSB on behalf of the school, should automatically be transferred to the IMC.</p>
<i>The operation and management of Government schools</i>	Highlight the areas of operation of Government schools which are consistent or not consistent with the requirements of the Bill, and provide	The operation and management of Government schools are consistent with the proposals of the Bill in many areas, for example:

	<p>justifications for any inconsistencies. (5 May 2004)</p> <p>Describe the changes in the operation and management of Government schools which have been or will be made in line with the requirements of the Bill. (12 May 2004)</p> <p>Describe the composition of the School Management Committee (SMC) of Government schools. (19 May 2004)</p>	<ul style="list-style-type: none"> • All Government schools have established their own School Management Committee (SMC) to manage the school and formulate the school development plans. • An SMC is comprised of the principal, parents, teachers, alumni, independent community members and a directorate grade officer of the Education and Manpower Bureau (similar to the SSB's representative) serving as the SMC Chairperson. • The teacher, parent and alumni representatives of the SMC are elected. All SMC members are appointed by PSEM. The SMC members will be elected in accordance with the election guide for the IMC. <p>The operation and management of Government schools are not consistent with the proposals of the Bill in certain areas such as:</p> <ul style="list-style-type: none"> • As Government schools are part of the Government, they have to operate in accordance with the existing regulations of the Government and other relevant ordinances. Government schools are exempted from registration under the Education Ordinance and therefore the SMC of Government school is not required to establish an IMC in accordance with the
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		<p>Bill.</p> <ul style="list-style-type: none"> • The Government is the employer of the staff of Government schools, so the appointment of staff in Government schools has to comply with the procedures and relevant guidelines for the appointment of civil servants. For the principals of Government schools, their appointments follow the existing regulations of the Government. It is not necessary for the schools to establish their own principal selection committee to select the principal. • The contracts between Government schools and the contractors or suppliers should be handled in accordance with relevant regulations of the Government and signed by the principals or relevant parties on behalf of the Government. <p>The above arrangements will remain unchanged after the enactment of the Bill.</p>
<i>Exemption of Government schools from the Education Ordinance</i>	<p>Explain the justifications for exempting Government schools from the Education Ordinance. (19 May 2004)</p>	<p>Government schools are part of the Government and operate in accordance with the existing regulations of the Government and relevant ordinances. As such, Government schools are exempted from registration under the Education Ordinance. Nevertheless, Government schools will manage their operation with reference to the</p>

		provisions of the Education Ordinance.
<i>Rights and liabilities of the school managers of Government schools</i>	<p>Describe the rights and liabilities of the managers of Government schools, and how the Administration will ensure their awareness of the civil liability which may arise in execution of the role and functions of the SMC. (12 May 2004)</p> <p>Elaborate on the protection of Government School managers against civil liability claims, and provide an update on the inclusion of Professional Indemnity and Directors and Officers Liability (PI&DOL) insurance in the Block Insurance Policy (BIP) for aided schools. (12 May 2004)</p> <p>Explain how the SMC managers are protected against civil liability claims. (19 May 2004)</p>	<p>The SMC members of a Government school are required to perform their duties in accordance with the functions empowered by the SMC constitution. Being civil servants, the SMC Chairpersons, the principals and teachers are also required to perform their duties in accordance with the regulations for civil servants and be responsible to the Government. In principle, the civil liabilities incurred by the SMC members in the performance of duties in accordance with the SMC constitution may be borne by the Government.</p> <p>Like the school managers of aided schools, SMC members of Government schools may also expose to PI&DOL. As such, we will explore the arrangement of a PI&DOL insurance policy to protect managers of IMC schools and SMC members of Government schools against such legal liabilities after the enactment of the Bill.</p>

Education and Manpower Bureau
June 2004

Statistical Analysis on A Sample Survey of the Contracts or Agreements Signed by Schools

A. School Levels

Primary	Secondary	Primary cum Secondary	Total
9	9	2	20 (from 18 SSBs, including 5 big SSBs)

B. Nature of Contracts

	Government funded contract							Non-government funded contract				
(i) Signed by	Teaching assistant	Temp staff	ECA Tutors	Cleaning service	Gardening service	Security service	Web services	Tuck shop	Lunch box	School bus	Stationary	ECA Tutors
SSB	0							1			2	
S/V	10	3	2	1				5	1	3		
S/H	4		11	7	2	4	1	3		1		1
S/V + S/H	3	3						2				
PTA									1			
(ii) Duration												
< 1 year			1	2								
1 year	17	6	12	5	2	2	1	2	2	4	1	1
2 years				1		1		5			1	
3 years						1		4				
> 3 years												