

LEGISLATIVE COUNCIL BRIEF

Education Ordinance
(Chapter 279)

EDUCATION (AMENDMENT) BILL 2002

INTRODUCTION

At the meeting of the Executive Council on 12 November 2002, the Council ADVISED and the Chief Executive ORDERED that the Education (Amendment) Bill 2002 at Annex A should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. The Education (Amendment) Bill 2002 aims to introduce the school-based management (SBM) governance framework to all aided schools. The underlying principles of SBM are two-fold. First, SBM seeks to provide schools with enhanced flexibility and autonomy in managing their own operation and resources according to the needs of their students. Second, it seeks to increase the transparency and accountability in the use of public funds and school operations by providing for a participatory decision-making mechanism where all key stakeholders are involved. The Government has been promoting SBM since 1991, and schools are encouraged to participate on a voluntary basis.

3. With a decade's experience, and as more and more responsibilities are devolved to aided schools in the use of public funds and in keeping with education reform, we need to ensure that there are proper checks and balances to govern school management. To this end, the Education Department (ED) set up the Advisory Committee on School-based Management (ACSBM) under the Board of Education in 1998 to draw up an SBM framework for aided schools.

4. ACSBM came up with the proposed framework in February 2000 and a two-month public consultation ensued. The feedback indicated a strong body of opinion in support of the introduction of a participatory, more transparent and accountable school governance structure. Teachers' associations and parents' groups welcomed the proposal, in particular, the idea that teachers and parents should become members of school management committees (SMCs). However, a fair number of school sponsoring bodies (SSBs) expressed reservations about aspects of the proposed framework, in particular, the devolution of responsibilities to SMCs and election of parent and teacher members to SMCs.

5. After weighing carefully the views received during public consultation, ACSBM revised some of its proposals to address, as far as possible, the concerns of the SSBs. ACSBM's final proposals were subsequently endorsed by the Board of Education. Having regard to the fact that the proposals represent a reasonable balance between the interests and sensitivities of different stakeholders, whilst upholding the underlying principles of SBM, the Administration has accepted in full the recommendations.

ACSBM's Recommendations

Registration of SMCs as incorporated bodies

6. At present, in the course of their duties, school managers may attract contractual and tortious liability. SMCs will be incorporated under the Education Ordinance as incorporated management committees (IMCs). By virtue of this act of incorporation, legal liabilities will vest in the IMCs and individual managers will no longer incur civil liability whilst carrying out duties, provided that they act in good faith. This will better protect school managers.

Composition of SMC

7. An SMC should comprise managers nominated by the SSB, the principal, one or more elected teacher managers, one or more elected parent managers, one or more alumni manager, plus one or more independent manager appointed from amongst community members. In the case of only one teacher manager and one parent manager, there will be one alternate teacher manager and one alternate parent manager. These alternate members may attend SMC meetings with the full members and enjoy the same rights save the voting right.

They will take the place of the full members and be entitled to vote when the latter cannot attend SMC meetings. They will only be liable to the same liabilities as other registered managers when they exercise their voting rights. Managers nominated by the SSB may constitute up to 60% of the total SMC membership.

8. The original proposal of ACSBM recommended two or more elected teacher managers and two or more elected parent managers. In recognition of the practical difficulties faced by large SSBs in finding sufficient number of school managers to fully utilize the “quota” for their managers (i.e. 60% of the SMC) and the fact that a large SMC may also not be conducive to constructive discussion and exchange of ideas, the number of elected teacher and parent managers was reduced to one or more for each category and the arrangement for alternate manager was introduced in the final recommendation. The revised recommendation could avoid the size of the SMC becoming unwieldy while ensuring the representation of the views of teachers and parents in the SMC.

SMC constitution

9. The SMC in each school will draw up its own constitution. Each constitution will address specific matters including the composition of the SMC and its membership, the tenure of office, arrangement for filling vacancies, selection of principal and the means by which the constitution may be amended.

Disclosure of personal data and declaration of interests

10. To increase schools’ transparency, ED will register the school managers and make their information (including name, tenure and representing sector) available to the public. In addition, managers shall declare to the SMC any personal interests which may conflict with their duties as managers of the SMC.

Maximum number of SMCs a school manager may sit on

11. To ensure that school manager has sufficient time to get to know the school and to attend SMC meetings and major school events, a school manager may serve on no more than five SMCs. The Director of Education (Director) should be given the discretion to make exemptions on a case-by-case basis, for example, full-time staff employed by SSB to oversee management of schools.

Roles of SSBs and SMCs

12. The roles of SSBs and SMCs will be stipulated clearly in the Education

Ordinance to better reflect their respective roles under the SBM governance framework. The role of SSB to set both the vision and mission for their sponsored schools and to have full control over the use of their own private funds and assets will be set out in the Ordinance as well.

Appointment of principal

13. The selection of the principal including the establishment of a selection committee with representatives of the SSB and SMC as well as co-opted independent members should be included in the SMC constitution. The SMC should remain responsible for recommending to The Director the appointment of principals. This is because under SBM, the principal is the chief administrator of a school and is responsible for managing the school in accordance with the directives of the SMC. In other words, he is accountable to the SMC for the day-to-day operation of a school.

Role of Supervisor

14. At present, the supervisor monitors the operation of the school on behalf of the SMC and is the person legally liable for its compliance with the Education Ordinance. The spirit of SBM is to have important decisions of schools made by SMCs collectively. In future, for schools which established an IMC, it is not necessary to retain the post of supervisor. The provisions on approval of supervisor in the Education Ordinance will not be applicable to IMC schools. In addition, the existing duties, responsibilities and liabilities of the supervisor under the Education Ordinance will be transferred to the IMC, the Chairperson of the IMC or the principal where appropriate.

15. It was recognized that some schools may, for operational reasons, wish to appoint representative(s) to discharge duties on behalf of the SMCs. The SMC may, depending on the circumstances of their schools, retain the post of 'supervisor'. The roles and powers of the 'supervisor' will be determined by the SMCs and will be set out in their constitutions. However, it should be the entire SMC instead of the 'supervisor' who will be accountable for the performance of the school.

Transition period

16. To provide more time for SSBs and schools to put in place the whole SBM framework and for parents and teachers to be fully prepared for the new governance environment, a transition period of five years (as opposed to the

originally proposed three years) after the enactment of the legislation will be given to all aided schools. However, every effort will be made to encourage those schools which are ready to migrate to the new governance structure as soon as possible.

17. There are eight aided schools having their own incorporation ordinances. Some provisions of these ordinances may not be fully consistent with the SBM requirement. For example, some schools stipulate in their ordinances that their SMCs should only be composed of managers nominated by the SSBs. If these schools were to follow the SBM requirement, there is a need to amend these ordinances. Within the five-year transition period, we will discuss with these schools and amend the relevant ordinances.

Other Recommendations by the Administration

Failure to incorporate the SMC

18. If the SSB of a planned aided school fails to establish an IMC under the amended Education Ordinance, the Government may terminate any agreement with the SSB in relation to the sponsorship, subsidization, management and operation of the school. In case an operating aided school fails to incorporate, in addition to the termination of the relevant agreements mentioned, the Director may also cancel the registration of all the managers of the school.

Director's power

19. In order to provide sufficient checks and balance to guard against any untoward developments after the implementation of school-based management, the Director will be empowered under the Education Ordinance to give directions to the IMC of any school to ensure that the education of the pupils of the school is promoted in a proper manner and the school is managed satisfactorily. The Director can appoint managers to a school when it is found that the provision of the Education Ordinance is being or has been contravened in respect of the school.

20. If a school is not being managed satisfactorily, the Director may cancel the registration of the school and the IMC will be dissolved. The Director may then transfer the school sponsorship to another SSB.

Flexibility for schools under the Direct Subsidy Scheme (DSS schools) and non-aided schools in receipt of government subsidies

21. The proposed SBM framework is a crucial step to increasing the transparency and accountability of school governance and provides a forum for direct participation of key stakeholders in school decision-making for the benefit of the school and students. It is therefore proposed that depending on individual schools' circumstances, DSS schools may choose to adopt the same SBM framework of aided schools and apply to establish an IMC under the Education Ordinance. Similar flexibility will also be extended to non-aided primary and secondary schools in receipt of government subsidies, for example, caput schools and private independent schools (receiving capital grant for construction of school premises) upon the approval of the Director.

Amendments to delete an obsolete reference to the Crown

22. Section 9(1)(a) of the Education Ordinance exempts the application of the Ordinances to schools entirely maintained and controlled by "the Crown in right of Her Majesty's Government in the United Kingdom" and their owners, managers, teachers and pupils from the Education Ordinance. The reference to the "Crown" needs to be adapted to reflect the status of Hong Kong as a Special Administrative Region of the People's Republic of China. The reference to the "Crown in the right of Her Majesty's Government in the United Kingdom" will be deleted as there are no schools entirely maintained and controlled by the United Kingdom or by the Central People's Government in Hong Kong.

Justification

23. The implementation of SBM will give schools greater autonomy in the delivery of education and deployment of resources. As the quality of education provided by the school directly impacts on learning outcomes of pupils, the quid pro quo to additional autonomy is that schools have to be more transparent and accountable to the community for their performance and the proper use of funds. The implementation of a participatory governance framework involving the principal, teachers, parents, alumni and independent community members is necessary since the direct participation of these key stakeholders in school decision-making would enhance the transparency and accountability of school governance and provide a forum for different views for the betterment of the school.

24. There are also both practical and technical reasons for going down the

legislative route to implement the governance framework by amending the Education Ordinance. Legislating the SBM requirements will give the framework a higher and credible status. This will demonstrate the Government's commitment to implement the requirements and ensure compliance on the part of the SSBs. Moreover, some key elements of the governance framework such as the incorporation provisions for the IMC, exemption from civil liabilities for managers who act in good faith, the definition of the roles of SSB and IMC, and the deletion of the post of supervisor for IMC schools, must be effected by legislation.

25. We have considered requiring the SMC to incorporate under the Companies Ordinance. However, this will cause inconvenience to SMCs and their members as they will be required to comply with various legislative requirements under the Companies Ordinance, for example, putting in place a memorandum and articles of association, filing annual returns to the Companies Registry and paying registration fees, etc. some of which may not be entirely applicable to schools. Moreover, the protection offered by this course of action to the managers is smaller and less certain than statutory exemption from liabilities.

THE BILL

26. The main provisions of the Education (Amendment) Bill 2002 are –

27. **Clause 4** provides for the deletion of an obsolete reference to the Crown;

28. **Clauses 11 & 12** provide for further grounds on which registration of school managers may be refused or cancelled, such as a manager registered with five or more IMC schools or a manager fails to produce a certificate issued by a registered medical practitioner upon request of the Director;

29. **Clause 17** adds two new parts which provide for the following –

- (a) the incorporation of the managers of a school as a separate legal entity to be known as IMC;
- (b) definitions, functions of SSB and IMC as well as powers of IMC;
- (c) the composition of IMCs to include the following categories of

- managers : SSB managers (must not exceed 60% of the maximum number of managers that is allowed under the constitution of the IMC), elected parent managers, elected teacher managers, the principal (ex-officio member), alumni and independent managers;
- (d) the election and nomination of managers and vacation of office;
 - (e) provisions for the constitution and operation of IMCs;
 - (f) provisions for managers to declare personal interests to the IMC in order to enhance the transparency of the IMC; and to protect managers from incurring civil liability in respect of anything done or omitted to be done by him or the IMC;
 - (g) the establishment of an IMC in every operating aided school within five years from the enactment of the Bill, and to require the establishment of an IMC in every planned aided school before the school commences operation;
 - (h) a DSS school and a school other than an aided school and DSS school which receives subsidies from the Government (“a non-aided school in receipt of Government subsidies”) to establish an IMC for the purpose of managing the school;
 - (i) the Government may terminate the sponsorship agreement if an IMC is not established as required;
 - (j) the Director has the power to give directions to IMCs, and to appoint managers to the IMC if any provision of the Education Ordinance has been contravened in respect of a school.

30. **Clause 22** provides the establishment of a principal selection committee for the purpose of nominating a suitable candidate to be the principal of an IMC school. The Director will have the power to waive the requirement in exceptional circumstances, e.g. where it is necessary to re-deploy a principal with a good track record from one school to another due to closure of school.

31. **Clauses 7, 32 and 50** relate to certain provisions of the Ordinance that impose criminal liability on a supervisor where he fails to discharge a specified duty. As regards IMC schools, these provisions are amended so that the duty is imposed on the IMC while the criminal liability for failing to discharge the duty is imposed on each of the managers making up the IMC. However, a manager who is charged with an offence under the amended provisions may raise a statutory defence that the offence was committed without his knowledge or consent, or that he has taken all reasonable steps to prevent the commission of

the offence;

32. **Clause 55 and Schedule 1** transfer the functions of the supervisor under the Education Regulations (Cap.279 sub. leg.) (“the Regulations”) to the IMC by substituting “supervisor” with “management authority” in various provisions of the Regulations;

33. **Clause 56 and Schedule 2** transfer certain functions of supervisors under the Regulations to the principals by substituting “supervisor” with “responsible person” in various provisions of the Regulations.

LEGISLATIVE TIMETABLE

34. The Legislative timetable approved by the Executive Council is-

Publication in the Gazette	22 November 2002
First Reading and commencement of Second Reading debate	4 December 2002
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

35. The workload for processing applications for incorporation, vetting of constitution of IMCs and other related matters will be absorbed by the Education Department through redeployment of existing resources. The proposal will not have any impact on the civil service system. There are no other financial and staffing implications for the Government.

36. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no economic and sustainability implications. Other than the amendment noted in paragraph 27 above, the Bill will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

37. A two-month public consultation was launched after the ACSBM issued its recommendations. The Board of Education and the LegCo Panel on Education have also been consulted. In the course of the consultation, the Panel arranged deputations from SSBs, teachers' associations and parents' groups to enable them to put forward their views.

PUBLICITY

38. We have arranged background briefings for key stakeholders including the SSB, SMCs and the school sector and shall issue a press release. Briefings for the media will be arranged. A line-to-take will be prepared. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

39. Enquiries about this brief may be directed to-
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Education and Manpower Bureau
20 November 2002

《2002年教育(修訂)條例草案》

EDUCATION (AMENDMENT) BILL 2002

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A BILL

To

Amend the Education Ordinance to make provision for establishment of incorporated management committees to manage certain types of schools, to delete an obsolete reference to the Crown, to provide for further grounds on which registration of school managers may be refused or cancelled, to provide that a permission or approval granted under certain provisions of the Education Regulations may be granted on the Director of Education's own motion or upon an application and to provide for incidental, consequential and transitional matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Education (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice published in the Gazette.

Education Ordinance

2. Interpretation

Section 3 of the Education Ordinance (Cap. 279) is amended -

(a) by renumbering it as section 3(1);

(b) in subsection (1) -

(i) by repealing the definition of "management committee" and substituting -

"management committee" (校董會), in

relation to a school without IMC,
means the managers of the school;”;

(ii) by repealing the definition of “manager” and substituting -

““manager” (校董), in relation to a school -

(a) means a person who is registered as a manager of the school under section 29 or under either of the repealed Ordinances; and

(b) subject to sections 40AH and 40AQ, includes an alternate manager within the meaning of section 40AB;”;

(iii) by repealing the definition of “registered manager”;

(iv) by repealing the definition of “sponsoring body” and substituting -

““sponsoring body” (辦學團體), in relation to a school, means a society, organization or body (whether incorporated or not) which is approved in writing by the Director to be the sponsoring body of the school;”;

(v) by adding -

“DSS school” (直資學校) means a school which has joined the Direct Subsidy Scheme administered by the Director under which the school receives subsidy directly from the Government according to such terms and conditions as may be specified by the Government from time to time;

“IMC school” (設有法團校董會學校) means a school in respect of which an incorporated management committee is established under Part IIIB;

“incorporated management committee” (法團校董會), in relation to a school, means the incorporated management committee established under section 40BM or 40BX in respect of the school;

“management authority” (管理當局) means, in relation to -

(a) a school without IMC, the supervisor of the school;

(b) an IMC school, the incorporated management committee of the school;

“non-aided school in receipt of Government subsidies” (獲政府津貼

的非資助學校) means a primary or secondary school which receives any grant or subsidy from the Government other than an aided school or DSS school;

"school management company" (學校管理公司), in relation to a school, means a company designated as such under subsection (2);

"school without IMC" (不設法團校董會學校) means a school other than an IMC school;"

(c) by adding -

"(2) The Director may by notice published in the Gazette designate any company which is incorporated under the Companies Ordinance (Cap. 32) for the purposes of operating a school as stated in its memorandum of association as a school management company.

(3) A notice published under subsection (2) is not subsidiary legislation."

3. Director to maintain registers

Section 8 is amended -

(a) in subsection (1) -

(i) in paragraph (d)(ii), by repealing “; and” and substituting a semicolon;

(ii) by adding -

“(da) a register of incorporated management committees, in which shall be entered -

(i) the name of every incorporated management committee; and

(ii) in respect of each incorporated management committee, the name and tenure of office of each manager and the category of manager specified in section 40AH(2) to which he belongs; and”;

(b) by adding -

“(3) The register maintained under subsection (1)(da) shall be made available in such manner as the Director thinks fit for public inspection to -

(a) enable any member of the public to ascertain whether he is dealing with a manager; and

(b) ensure transparency and accountability of the

incorporated management
committee.".

4. Exemption of schools from Ordinance

Section 9(1)(a) is amended by repealing everything after "the Government" and substituting a semicolon.

5. Grounds for refusal to register school

Section 14(1)(i) and (j) is amended by adding "or incorporated management committee (as may be appropriate)" after "committee".

6. Certificate of registration or provisional registration

Section 18(3) is amended by repealing "he" and substituting "it".

7. Approval of Director required for post secondary education

Section 18A is amended -

(a) in subsection (1), by repealing "he" and substituting "it";

(b) by adding -

"(3) If an incorporated management committee contravenes subsection (1), every manager of the school shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months.

(4) If a person is charged under subsection (3), it shall be a defence to the charge if he proves that -

- (a) the contravention was committed without his knowledge or consent;
or
- (b) he took all reasonable steps to prevent the contravention."

8. Grounds for cancellation of registration or provisional registration of school

Section 22(1) is amended -

- (a) in paragraph (d), by repealing "on the supervisor or any other manager of the school";
- (b) in paragraph (e), by repealing "management committee is not managing the school" and substituting "school is not being managed".

9. Part heading amended

The heading to Part III is amended by adding "Registration of" before "Managers".

10. Subheading repealed

The subheading "**Registration of managers of schools**" before section 27 is repealed.

11. Application for registration of manager

Section 28 is amended by repealing everything after "be" and substituting -

"made -

- (a) to the Director in the specified form; and
- (b) in the case of an IMC school, through the incorporated management committee of the school."

12. Grounds for refusal to register manager

Section 30 is amended -

- (a) in subsection (1) -
 - (i) in paragraph (d), by adding "or" at the end;
 - (ii) in paragraph (e), by repealing "; or" at the end and substituting a full stop;
 - (iii) by repealing paragraph (f);

(b) by adding -

"(1A) The Director may refuse to register an applicant as a manager of -

- (a) a school if the applicant has previously been -
 - (i) adjudged bankrupt or entered into a voluntary arrangement under the Bankruptcy Ordinance (Cap. 6); or
 - (ii) convicted in Hong Kong or elsewhere of a criminal offence punishable with imprisonment; or
- (b) an IMC school or a school in respect of which a submission has been made under section 40BJ or 40BU if the applicant -

- (i) has been registered as a manager of 5 or more schools; or
- (ii) fails to produce, upon request by the Director, a medical certificate issued by a registered medical practitioner after the date of such request certifying that the applicant is fit to perform the functions of a manager.";

(c) in subsection (2), by repealing everything after "applicant as a manager of" and substituting -

"-

- (a) a school if it appears to the Director that the applicant is not acceptable as a manager of the school to the majority of the managers; or
- (b) an IMC school if -
 - (i) the applicant is on a list of proposed managers which the Director refuses to approve under section 40BL; or

- (ii) the registration of the applicant as a manager of the school will render the composition of the incorporated management committee of the school inconsistent with the constitution of the committee."

13. Grounds for cancellation of registration of manager

Section 31 is amended -

- (a) in subsection (1) -

- (i) in paragraph (b), by repealing "30(1)(a) to (e)" and substituting "30(1) or (1A)";
- (ii) in paragraph (e)(iii), by repealing "; or" and substituting a semicolon;
- (iii) by repealing paragraph (f);
- (iv) by adding -

- "(g) (where the school is an IMC school) if the Director receives a notice in writing from the incorporated management committee of the school that -

- (i) the manager has been absent without leave from 3 consecutive meetings of the committee; and

- (ii) the manager has been given due notice to attend those meetings;
 - (h) if the manager has been adjudged bankrupt or entered into a voluntary arrangement under the Bankruptcy Ordinance (Cap. 6);
 - (i) if the manager has been convicted in Hong Kong or elsewhere of a criminal offence punishable with imprisonment;
 - (j) if the manager fails to produce, upon request by the Director, 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;
 - (k) if he receives a notice under section 40AV as regards the manager; or
 - (l) if the manager contravenes section 40BD." ;
- (b) in subsection (2) -

- (i) in paragraph (a), by repealing "management committee; or" and substituting "managers;" ;
- (ii) by adding -
 - "(aa) if he receives a written notice (whether under section 40AT or otherwise) from the management committee or incorporated management committee (as may be appropriate) that the term of office of the manager has expired;
 - (ab) if he receives a notice under section 40AU as regards the manager; or".

14. Heading substituted

The subheading "**Management committees**" before section 32 is repealed and the following substituted -

"PART IIIA

MANAGEMENT OF SCHOOLS WITHOUT INCORPORATED
MANAGEMENT COMMITTEE".

15. Section added

The following is added before section 32 -

"31A. Application of Part IIIA

This Part applies to a school without IMC.".

16. Subheading repealed

The subheading "**Supervisors**" before section 34 is repealed.

17. Parts added

The following are added after section 40 -

"PART IIIB

MANAGEMENT OF AIDED SCHOOLS, DSS SCHOOLS OR NON-AIDED
SCHOOLS IN RECEIPT OF GOVERNMENT SUBSIDIES BY
INCORPORATED MANAGEMENT COMMITTEE

General provisions

40AA. Application of this Part

This Part applies to an IMC school.

40AB. Interpretation of Part IIIB

In this Part, unless the context otherwise requires -

"alternate manager" (替代校董) means an alternate parent manager or alternate teacher manager;

"alternate parent manager" (替代家長校董) means a manager who is nominated under section 40AM for registration as such;

"alternate teacher manager" (替代教員校董) means a manager who is elected under section 40AL for registration as such;

"alumnus" (校友), in relation to a school, means a person who has been a pupil of the school but is no longer such a pupil;

"alumni manager" (校友校董) means a manager who is nominated for registration as such under section 40AN;

"bi-sessional school" (上下午班制學校) means a school the registration of which under this Ordinance covers an A.M. session and a P.M. session using the same school premises;

"chairperson" (主席), in relation to an incorporated management committee, means the chairperson of the committee who holds

office as such under section 40AI and includes a person elected under section 40AI(2) to act as the chairperson;

"commencement date" (生效日期) means the date on which this Part comes into operation;

"independent manager" (獨立校董) means a manager who is nominated for registration as such under section 40AO;

"operating school" (現有學校) means -

- (a) an aided school which -
 - (i) is a school without IMC; and
 - (ii) has commenced operation before the commencement date;
- (b) a DSS school in respect of which a notice has been given under section 40BH; or
- (c) a non-aided school in receipt of Government subsidies in respect of which an approval has been granted under section 40BI;

"parent" (家長), in relation to a pupil, includes his guardian and a person having actual custody of the pupil;

"parent manager" (家長校董) means a manager who is nominated for registration as such under section 40AM;

"planned school" (籌辦中的學校), subject to section 40CB, means -

- (a) an aided school the scheduled opening date of which falls on or after the commencement date;
- (b) a DSS school in respect of which a notice has been given under section 40BS; or
- (c) a non-aided school in receipt of Government subsidies in respect of which an approval has been granted under section 40BT;

"recognized alumni association" (認可校友會), in relation to a school, means an association recognized under section 40AN(1);

"recognized parent-teacher association" (認可家長教師會), in relation to a school, means a parent-teacher association recognized under section 40AM(1);

"scheduled opening date" (預計開課日期), in relation to a school, means the scheduled date on which the school commences operation as agreed between the sponsoring body and the Director;

"specialist staff" (專責人員), in relation to a special school, means -

- (a) any person employed to work for the school as a school social worker, speech therapist, physiotherapist, occupational therapist, occupational therapist assistant, educational psychologist, nurse, warden, assistant warden, houseparent-in-charge, houseparent, programme worker or braille staff; and
- (b) any other person employed to work in the school as may be specified by the Director in the code of aid for special schools for the purposes of this definition;

"sponsoring body manager" (辦學團體校董) means a manager who is nominated for registration as such by the sponsoring body under section 40AK;

"teacher" (教員) means a person who is employed as a permitted teacher or registered teacher in the school;

"teacher manager" (教員校董) means a manager who is elected for registration as such under section 40AL.

40AC. Incorporated management committee to manage school

When an incorporated management committee has been established in respect of a school, the school shall, subject to section 40AD, be managed by the incorporated management committee.

40AD. Functions of sponsoring body and incorporated management committee

(1) The sponsoring body of a school shall be responsible for -

- (a) meeting the cost of furnishing and equipping the new school premises of the school to, where applicable, standards as recommended by the Director;
- (b) setting out the vision and mission for the school;
- (c) maintaining full control of the use of funds and assets owned by it;
- (d) ensuring, through the sponsoring body managers, that the mission is carried out;
- (e) giving general directions to the incorporated management committee in the formulation of education policies of the school;
- (f) overseeing the performance of the incorporated management committee; and
- (g) drafting the constitution of the incorporated management committee.

(2) The incorporated management committee of a school shall be responsible for -

- (a) formulating education policies of the school;
- (b) planning and managing financial and human resources available to the school;
- (c) accounting to the Director and the sponsoring body for the performance of the school;
- (d) ensuring that the mission of the school is carried out;
- (e) ensuring that the education of the pupils of the school is promoted in a proper manner; and
- (f) school planning and self-evaluation.

40AE. Powers of incorporated management committee

(1) An incorporated management committee of a school may do anything that appears to it to be necessary or expedient for the purposes of, or in connection with, proper management, administration or operation of the school.

(2) Without limiting subsection (1), an incorporated management committee of a school may -

- (a) 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;
- (b) employ such teaching staff and non-teaching staff as it thinks fit and determine the terms and conditions of service of such staff;
- (c) engage the service of such professionals or other persons as it thinks fit and determine their remuneration;

- (d) use and dispose of the funds and assets owned by it or received from the Government;
- (e) open and operate bank accounts and invest its funds in such manner and to such extent as it thinks fit;
- (f) borrow money in such manner and on such security or terms as may be expedient;
- (g) apply for and receive any grant in aid on such terms as may be expedient;
- (h) 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;
- (i) enter into any contract, agreement or arrangement;
- and
- (j) do such other things as are provided for by this Ordinance or as are necessary for, or incidental or conducive to, the furtherance of the object of the school.

(3) The exercise of the power of an incorporated management committee shall be subject to -

- (a) the provisions of this Ordinance or any other law;
- (b) any direction given by the Director under section 40CC;
- (c) (in the case of an aided school) the code of aid for primary schools, the code of aid for secondary schools or the code of aid for special schools (as may be applicable);
- (d) (in the case of a DSS school) the terms and conditions upon which the school joined the Direct Subsidy Scheme administered by the Director; and

- (e) (in the case of a non-aided school in receipt of Government subsidies) the terms and conditions for receiving subsidies from the Government (if applicable).

40AF. Certain property not to vest in incorporated management committee

(1) For the avoidance of doubt, it is declared that no property belonging to and provided by the Government or the sponsoring body for the operation of a school shall, by reason only of the establishment of the incorporated management committee of the school, become property of the committee.

(2) The incorporated management committee of a school shall hold any subsidy received from the Government in accordance with the code of aid for primary schools, the code of aid for secondary schools or the code of aid for special schools (as may be applicable) as trustee.

40AG. Irregular establishment, etc. do not affect contract

The validity of a contract entered into by an incorporated management committee shall not be affected by any irregularity or defectiveness in -

- (a) the election or nomination of any person for registration as manager of the school;
- (b) the registration of any manager of the school as such; or
- (c) the composition or establishment of the committee.

Composition of incorporated management committee

40AH. General requirement of composition

(1) An incorporated management committee shall, subject to the other provisions of this Part, be constituted in accordance with the constitution of the committee.

(2) Without prejudice to subsection (1), the composition of an incorporated management committee as provided for in its constitution shall be -

- (a) subject to subsection (3), such number of sponsoring body manager as the school sponsoring body may nominate;
- (b) the principal of the school, who shall be an ex-officio manager;
- (c) not less than one teacher manager;
- (d) not less than -
 - (i) (where a recognized parent-teacher association is recognized in respect of the school) one parent manager; or
 - (ii) (where 2 recognized parent-teacher associations are recognized in respect of the A.M. session and P.M. session of the school which is a bi-sessional school) one parent manager for each of the A.M. session and P.M. session;
- (e) one or more alumni managers where such manager or managers is or are nominated;
- (f) not less than one independent manager;

- (g) where the constitution allows the election of not more than one teacher manager, one alternate teacher manager; and
- (h) where the constitution allows the nomination of -
 - (i) not more than one parent manager, one alternate parent manager; or
 - (ii) (in the case of a bi-sessional school in respect of which 2 recognized parent-teacher associations are recognized for the A.M. session and P.M. session) not more than one parent manager for the A.M. session and one parent manager for the P.M. session, one alternate parent manager for the A.M. session and one alternate parent manager for the P.M. session.

(3) Subject to subsection (5), the numbers of sponsoring body manager shall not exceed 60% of the maximum number of managers that the incorporated management committee may have under its constitution.

(4) In calculating the maximum number of managers for the purposes of subsection (3), an alternate manager shall not be counted.

(5) Subsection (3) shall not apply in relation to a school in the first 3 years of its operation.

40AI. Chairperson of incorporated management committee

(1) The incorporated management committee of a school shall have a chairperson who shall -

- (a) be a manager of the school; and
- (b) hold and vacate office as such in accordance with the constitution of the committee.

(2) If the 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 other managers shall elect amongst themselves a manager to act as the chairperson during the period.

(3) The principal or a teacher of the school shall not be the chairperson or act as the chairperson.

(4) The incorporated management committee shall give notice of the assumption of office -

- (a) of the first chairperson to the Director within 14 days after its establishment; and
- (b) of any subsequent chairperson to the Director within 14 days after his election.

(5) A notice given under subsection (4) shall contain the English and Chinese names of the chairperson and such other information as the Director may specify.

40AJ. Functions of chairperson

(1) The chairperson of an incorporated management committee of a school shall -

- (a) preside over the meetings of the committee;
- (b) within one month from the happening of any of the following events, give notice of the event to the Director -
 - (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;
- (c) sign the statement of accounts of the committee;
- (d) within one month of -
- (i) 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
 - (ii) the handing down of the judgment in the proceedings to which such writ or originating process relates,
- give notice of the event to the Director; and
- (e) perform such functions as may be provided for in the constitution of the committee.

(2) A notice given under subsection (1)(b) in respect of an event shall -

- (a) be in writing;
- (b) specify the date of the event; and
- (c) specify the name and address of the person to whom the notice relates and, if he is a registered or permitted teacher, his registration number or permitted teacher reference number.

(3) A notice required to be given by the incorporated management committee shall be given in the name of and signed by the chairperson.

**Election and nomination of managers
and vacation of office**

**40AK. Nomination of sponsoring
body manager**

The sponsoring body of a school may nominate such number of persons for registration as sponsoring body manager of the school as may be provided for in the constitution of the incorporated management committee of the school.

40AL. Election of teacher manager

(1) Subject to the constitution of the incorporated management committee of a school, the teachers and, where the school is a special school, specialist staff of the school may elect amongst themselves such number of persons for registration as teacher manager or alternate teacher manager of the school as may be provided for in the constitution.

(2) The principal shall not be elected under subsection (1).

40AM. Nomination of parent manager

(1) The incorporated management committee of a school may recognize one body of persons (however described) as recognized parent-teacher association for the purposes of making nomination under subsection (4).

(2) Notwithstanding subsection (1), the incorporated management committee of a bi-sessional school may recognize -

(a) one body of persons (however described) as recognized parent-teacher association in respect of the A.M. session of the bi-sessional school; and

(b) another body of persons (however described) as recognized parent-teacher association in respect of the P.M. session of the bi-sessional school,

for the purposes of making nomination under subsection (4).

(3) A body of persons shall not be recognized under subsection (1) unless under its constitution -

(a) only -

(i) parents of current pupils of the school; or

(ii) serving teachers of the school, may elect or become office-bearers of the body;

(b) in an election held for the purposes of making nomination under subsection (4) -

(i) the election is conducted by voting by secret ballot;

(ii) a teacher of the school who is not the parent of a current pupil of the school has no right to vote; and

(iii) those who are entitled to vote have equal voting right; and

(c) the system of such election is otherwise fair and transparent.

(4) A recognized parent-teacher association may nominate such number of persons for registration as parent manager or alternate parent manager of the school as may be provided for in the constitution of the incorporated management committee of the school.

(5) A person nominated under subsection (4) -

(a) must be -

(i) a parent of a current pupil of the school; and

(ii) elected in that behalf by the members of the parent-teacher association; and

(b) must not be a teacher of the school.

40AN. Nomination of alumni manager

(1) The incorporated management committee of a school may recognize one body of persons (however described) as recognized alumni association for the purposes of making nomination under subsection (4).

(2) Notwithstanding subsection (1), the incorporated management committee of a bi-sessional school may recognize -

(a) one body of persons (however described) as recognized alumni association in respect of the A.M. session of the bi-sessional school; and

(b) another body of persons (however described) as recognized alumni association in respect of the P.M. session of the bi-sessional school, for the purposes of making nomination under subsection (4).

(3) A body of persons shall not be recognized under subsection (1) unless under its constitution -

- (a) only the alumni of the school may elect or become office-bearers of the body; and
- (b) the system of election held for the purposes of making nomination under subsection (4) is fair and transparent.

(4) A recognized alumni association may nominate such number of persons for registration as alumni manager of the school as may be provided for in the constitution of the incorporated management committee of the school.

(5) If no person is nominated under subsection (4) in respect of a school, the incorporated management committee may nominate such number of persons for registration as alumni manager of the school as may be provided for in its constitution.

- (6) A person nominated under subsection (4) or (5) -
- (a) must be an alumnus of the school; and
 - (b) must not be a teacher of the school.

40AO. Nomination of independent manager

(1) The incorporated management committee of a school may nominate such number of persons for registration as independent manager of the school as may be provided for in the constitution of the committee.

(2) The following persons shall not be nominated under subsection (1) -

- (a) a teacher of the school;
- (b) the parent of a current pupil of the school;
- (c) an alumnus of the school; or
- (d) a person who is -
 - (i) a member;
 - (ii) the spouse or parent or a child of a member; or
 - (iii) an employee,
of the sponsoring body of the school or the governing body of the sponsoring body.

40AP. Exemption from composition requirements

(1) The first independent manager of a school may be registered as such at any time within one year from the establishment of the incorporated management committee of the school.

(2) If the incorporated management committee of a school is established under section 40BX -

- (a) the first teacher manager of the school may be registered as such at any time within one year from the establishment of the committee; and
- (b) the first parent manager of a school may be registered as such at any time within 3 years from the establishment of the committee.

(3) An incorporated management committee may apply to the Director for exemption from any requirement of this Ordinance on its composition.

(4) An application under subsection (3) shall be made in

such manner as the Director may specify.

(5) The Director shall decide an application under subsection (3) by -

- (a) where he is satisfied that the incorporated management committee has taken all reasonable steps to secure compliance of the requirement, granting the exemption subject to such condition (if any) as he thinks fit; or
- (b) in any other case, refusing to grant the exemption.

(6) If -

- (a) an application under this section is pending; or
- (b) an exemption has been granted under this section,

the Director shall not take any action under section 22, 31 or 41 in respect of the school concerned only because that any requirement on the composition of the incorporated management committee is not complied with.

40AQ. Provisions applicable to alternate managers

(1) Subject to this section, an alternate manager shall for all purposes be regarded as a manager.

(2) An alternate teacher manager of a school shall not vote on any matter to be resolved by the incorporated management committee by voting unless -

- (a) (in the case of a matter to be resolved at a meeting of the committee) no teacher manager of the school is present at the meeting;
- (b) (in the case of a matter to be resolved otherwise) the school has no teacher manager for the time being.

(3) An alternate parent manager of a school shall not vote

on any matter to be resolved by the incorporated management committee by voting unless -

(a) (in the case of a matter to be resolved at a meeting of the committee) no parent manager of the school is present at the meeting;

(b) (in the case of a matter to be resolved otherwise) the school has no parent manager for the time being.

(4) In ascertaining the majority of the managers of a school for the purposes of section 30(2), 31(2)(a), 56(1)(d) or 57(1)(d) -

(a) an alternate teacher manager shall not be counted unless the school has no teacher manager for the time being; and

(b) an alternate parent manager shall not be counted unless the school has no parent manager for the time being.

(5) For the purposes of establishing a quorum of a meeting of incorporated management committee -

(a) an alternate teacher manager of the school shall not be counted unless no teacher manager of the school is present at the meeting; and

(b) an alternate parent manager of the school shall not be counted unless no parent manager of the school is present at the meeting.

(6) An alternate manager shall not only because of his being a manager incur any liability for an act done pursuant to a voting of the incorporated management committee in which he has not participated by virtue of subsection (2) or (3).

(7) In subsections (3) and (5), a reference to school includes a reference to the A.M. session or P.M. session of a bi-sessional

school.

40AR. Endorsement of application for registration as manager

If -

- (a) a person is nominated or elected for registration as a manager of a school under this Part; and
- (b) he applies for registration as a manager of the school,

his application form shall be endorsed -

- (c) (in the case of a manager other than the principal, a teacher manager or an alternate teacher manager) by the body that nominated him;
- (d) (in the case of a teacher manager or an alternate teacher manager) by the principal of the school,

and, if he is on the list of proposed managers referred to in section 40BJ(2)(b) or 40BU(2)(b), by the sponsoring body in such manner as the Director may specify.

40AS. Filling of vacancies to maintain full composition

(1) For the purposes of this section, an incorporated management committee fails to maintain its full composition if by reason of any vacancy in the office of a manager, its composition does not comply with the provisions of this Part and its constitution.

(2) The incorporated management committee shall, within one month from the date on which the failure to maintain full composition arises -

- (a) ensure that a person qualified to fill the vacancy is nominated or elected for registration as a manager; and
- (b) forward to the Director an application by the person for registration as a manager.

(3) The Director may extend the period mentioned in subsection (2) if the incorporated management committee so requests on good grounds within the period.

(4) For the purposes of subsection (2), a person is qualified to fill the vacancy if he is nominated or elected for registration as a manager in the same manner as the manager who ceased to hold the office concerned.

40AT. Expiry of term of office

If the term of office of a manager expires in accordance with the constitution of the incorporated management committee (whether or not he is nominated or elected as a manager of the school who assumes office immediately after such expiry), the committee shall give a written notice of the expiry to the Director.

40AU. Resignation, etc. of manager

- (1) If a manager -
 - (a) resigns from his office as a manager in accordance with the constitution of the incorporated management committee; or
 - (b) passes away,

the committee shall give a written notice of the event to the Director.

(2) If -

(a) the principal of a school ceases to be the principal or a teacher of the school; or

(b) a teacher manager or alternate teacher manager of a school ceases to be a teacher of the school,

he shall for the purposes of subsection (1) be deemed to have resigned from his office as a manager in accordance with the constitution of the incorporated management committee of the school.

40AV. Vacation of office of teacher manager, etc.

(1) The incorporated management committee shall, upon receiving a request under subsection (2), (3), (4) or (5), issue a written notice to the Director as regards the cancellation of registration of the manager concerned.

(2) The teachers and (where applicable) specialist staff of a school may make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of any teacher manager or alternate teacher manager of the school specified in the request.

(3) The recognized parent-teacher association of a school may make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of any parent manager or alternate parent manager of the school specified in the request.

(4) The recognized alumni association of a school may make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of any alumni manager

of the school specified in the request.

(5) The sponsoring body of a school may make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of any sponsoring body manager of the school specified in the request.

(6) A request made under subsection (2), (3), (4) or (5) shall not have effect unless it is authorized by a resolution passed by the maker of the request -

- (a) on the ground that the manager concerned is not suitable to continue to hold office; and
- (b) in a manner which is, as far as reasonably practicable, similar to the manner in which the manager concerned is elected or elected for nomination, as may be appropriate.

(7) In subsections (3) and (4), a reference to school includes a reference to the A.M. session or P.M. session of a bi-sessional school.

Operation of incorporated management committee

40AW. Constitution of incorporated management committee

- (1) An incorporated management committee shall -
 - (a) have a written constitution which is approved by the Director; and
 - (b) conduct its affairs in accordance with its constitution.

(2) The constitution of an incorporated management committee shall not be amended unless prior written approval of the Director is obtained.

(3) The Director may, upon application in such manner as he may specify, grant an approval for amending the constitution of an incorporated management committee.

(4) The incorporated management committee shall, as soon as practicable after the approval of an amendment to its constitution, lodge a copy of its constitution as amended with the Director.

40AX. Delegation of functions

(1) An incorporated management committee may, either generally or for a particular purpose, delegate any function conferred on it by this Ordinance (except section 40AD) to a manager other than an alternate manager.

(2) Where a manager performs a function conferred by this Ordinance on the incorporated management committee, the committee shall, unless the contrary is proved, be deemed to have delegated that function to that manager.

(3) Where there is a delegation under subsection (1), the manager shall -

(a) report to the incorporated management committee on any act done pursuant to the delegated function; and

(b) make such report at the meeting of the committee immediately following the doing of the act.

(4) A delegated function which is duly performed by a delegate shall be regarded as having been performed by the incorporated management committee.

(5) A function which has been delegated may be performed by the incorporated management committee notwithstanding the delegation.

40AY. Director's nominee may attend meeting

(1) A public officer nominated by the Director in that behalf may -

(a) attend any meeting of the incorporated management committee of a school; and

(b) offer such advice at the meeting as he thinks fit.

(2) The Director may nominate a public officer to attend a meeting if it appears to the Director that the attendance will be conducive to the operation and performance of the school.

40AZ. Accounts of incorporated management committee

(1) An incorporated management committee shall -

(a) maintain proper books of account and other financial and accounting records as stipulated in -

(i) the code of aid for primary schools, the code of aid for secondary schools or the code of aid for special schools (as may be applicable); or

(ii) such instructions as may be given by the Director for the purposes of this paragraph from time to time;

(b) cause to be prepared for each accounting year of the committee statements of the accounts of the committee; and

(c) submit the statement of accounts to the Director at such time and in such manner as the Director may specify.

(2) The statement of accounts mentioned in subsection (1) shall -

(a) include an income and expenditure account and balance sheet; and

(b) be authenticated by the signatures of the chairperson of the incorporated management committee and one other manager authorized to act for that purpose, either generally or specifically.

(3) An incorporated management committee shall appoint an accountant as the auditor.

(4) The auditor appointed under subsection (3) shall -

(a) audit the accounts prepared under subsection (1);

(b) report as to -

(i) whether such account and balance sheet present fairly the financial transactions of the incorporated management committee during the accounting year to which the account and balance sheet relate; and

(ii) the financial position of the incorporated management committee at the end of that year, subject to such qualification (if any) as he thinks fit;

(c) submit the report to the Director at such time as the Director may specify;

(d) be entitled to require such information and

explanations as he considers necessary for discharging his duties; and

- (e) comply with such directions as may be given by the Director for the purposes of this paragraph from time to time.

(5) The incorporated management committee shall permit -

- (a) the Director;
- (b) any inspector of schools; or
- (c) the auditor appointed under subsection (3),

to inspect the books of account and all vouchers, receipts, invoices, documents and records in the committee's control which are relevant to the financial transactions of the committee.

(6) In this section, "accountant" (會計師) means a certified public accountant or a public accountant within the meaning of the Professional Accountants Ordinance (Cap. 50).

40BA. Service of documents

A document may be served on an incorporated management committee by leaving it at, or sending it by post to, the registered office of the committee.

40BB. Restrictions on execution of judgment by writ of fieri facias

In the execution of a judgment against an incorporated management committee of a school by writ of fieri facias, any property that is -

- (a) located in the school premises; and

(b) used in connection with giving instructions to the pupils of the school, shall not be seized.

40BC. Dissolution

On the cancellation of the registration or provisional registration of a school under section 22 -

- (a) the incorporated management committee shall be dissolved;
- (b) the name of the committee shall be removed from the register of incorporated management committees; and
- (c) the properties owned by the committee immediately before its dissolution shall be vested in the Director as the corporation sole constituted under the Director of Education Incorporation Ordinance (Cap. 1098) who shall, as far as reasonably practicable, apply the properties to settle the liabilities (if any) of the committee which are outstanding immediately before its dissolution in such manner as he considers fair.

Provisions relating to managers

40BD. Declaration of pecuniary or other personal interests annually

(1) A manager of a school shall, at least once in every 12 months, make to the incorporated management committee of the school a written declaration which -

- (a) states the particulars of any pecuniary or other personal interest, direct or indirect, that he has in any matter that raises or may raise a conflict with his duties as a manager of the school; or
- (b) states that he has no such interest.

(2) Within one month after a change occurs in any matter stated in a declaration, the manager who made the declaration shall make to the incorporated management committee another written declaration which states the change.

(3) A manager shall, if so required by the incorporated management committee, provide the committee with such further information as it thinks necessary to establish any particular contained in a declaration made by him.

(4) A manager shall not make a declaration under subsection (1) or (2) which he knows to be false or misleading in a material particular.

40BE. Disclosure of pecuniary or other personal interests

(1) If -

- (a) a manager has any pecuniary or other personal interest, direct or indirect, in a matter that is considered or is to be considered at a meeting of the incorporated management committee; and
- (b) the matter appears to raise a conflict with the proper performance of the manager's duties in relation to the consideration of the matter,

that manager shall disclose the nature of the interest at the meeting or (if he does not attend the meeting) by giving a notice in writing to the committee before the meeting.

- (2) A disclosure under subsection (1) by a manager that -
- (a) he or any nominee of him is a member of a specified company or other body;
 - (b) he is an officer or employee of a specified company or other body;
 - (c) he is a partner or is in the employment of a specified person; or
 - (d) he has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1). In this subsection, "specified" (指明) means specified in the notice given by the manager under subsection (1).

(3) A disclosure made under subsection (1) shall be recorded in the minutes of the meeting concerned.

(4) After a manager has disclosed the nature of any interest in a matter, he shall not, unless the incorporated management committee otherwise determines -

- (a) be present during any deliberation of the committee with respect to the matter; or
- (b) take part in any deliberation or decision of the committee with respect to the matter.

(5) For the purposes of the making of a determination by the incorporated management committee under subsection (4), a manager who has any pecuniary or other personal interest in a matter to which the disclosure relates must not -

- (a) be present during any deliberation of the committee for the purpose of making the determination; or
- (b) take part in the making by the committee of the determination.

(6) For the purposes of this section, a manager who is a person employed to work at the school shall not be treated as having any pecuniary or other personal interest in a matter merely because -

- (a) he has an interest in the matter which is no greater than the interest of -
 - (i) (where he is employed as a teacher) the generality of teachers of the school;
 - (ii) (where he is employed otherwise than as a teacher) the generality of persons employed to work at the school otherwise than as teachers;
- (b) the matter under consideration or discussion concerns the exercise by the incorporated management committee of its function relating to the curriculum for the school; or
- (c) the matter under consideration or discussion involves expenditure of the committee.

(7) Managers shall not, by reason of any pecuniary or other personal interest in a matter, be prevented from considering and voting on proposals for the incorporated management committee to take out insurance protecting the managers against liabilities incurred by them arising out of their office. The committee shall not, by reason of the interest of the managers, be prevented from obtaining such insurance and paying the premium.

(8) A contravention of this section does not invalidate a

decision of the incorporated management committee.

40BF. Register of interests

The incorporated management committee of a school shall -

(a) keep a register of -

(i) all declarations made under section 40BD; and

(ii) all disclosures made under section 40BE; and

(b) permit any inspector of schools to inspect the register at any reasonable time to enable the Director to ascertain whether those sections are complied with.

40BG. Rights and liability of manager and protection

(1) A manager shall not by virtue of his office as the manager be beneficially interested in any property of the incorporated management committee.

(2) A manager shall not incur any civil liability in respect of anything done or omitted to be done -

(a) by the incorporated management committee in the performance or purported performance of its function under this Ordinance if he has acted in good faith in relation to the thing done or omitted to be done (as the case may be); or

(b) by him in good faith in the performance or purported performance of any function of his office as the manager.

(3) The protection conferred under subsection (2)(b) does

not in any way affect the liability, if any, of the incorporated management committee for the act or omission of the manager in the performance or purported performance of the relevant function.

**Establishment of incorporated management
committee: operating school**

**40BH. Establishment of incorporated
management committee in respect
of operating DSS school**

The sponsoring body of a DSS school which -

- (a) is a school without IMC; and
- (b) has commenced operation before the commencement date,

may notify the Director in writing of its intention to establish an incorporated management committee in respect of the school.

**40BI. Establishment of incorporated management
committee in respect of operating
non-aided school in receipt of
Government subsidies**

(1) The sponsoring body of a non-aided school in receipt of Government subsidies which -

- (a) is a school without IMC;
- (b) has commenced operation before the commencement date; and
- (c) has fulfilled such condition as the Director may specify,

may apply in writing for the approval of the Director for establishing an incorporated management committee in respect of the school.

(2) A sponsoring body which makes an application under subsection (1) shall provide to the Director such information as he may reasonably require for determining the application.

(3) The Director may, if he is satisfied that the establishment of an incorporated management committee of the school will be in the interest of the school, grant an approval for the establishment on such conditions (if any) as he thinks fit.

**40BJ. Establishment of incorporated
management committee in
respect of operating
school**

(1) The sponsoring body of an operating school which is an aided school shall make a submission under this section for the purposes of the establishment of an incorporated management committee in respect of the school within 5 years from the commencement date.

(2) The sponsoring body of an operating school shall submit to the Director -

- (a) a draft of the constitution of the proposed incorporated management committee;
- (b) a list of the proposed managers of the school; and
- (c) an application by each proposed manager for registration as a manager of the school that complies with section 28.

(3) Subject to subsections (4) and (5), a submission made under subsection (2) shall be made -

- (a) within 4 years from the commencement date; or
- (b) by such later date as the Director may approve in writing.

(4) Where a notice is given under section 40BH in respect of a school, a submission shall be made under subsection (2) in respect of the school within 6 months from the date of the notice.

(5) Where an approval is granted under section 40BI in respect of a school, a submission shall be made under subsection (2) in respect of the school within 6 months from the date on which the approval is granted.

(6) The sponsoring body shall provide to the Director such further information relating to the submission as he may reasonably require for the purposes of enabling him to exercise his power under section 40BK or 40BL.

40BK. Approval of draft constitution

The Director shall approve or refuse to approve a draft of a constitution submitted under section 40BJ(2) in accordance with any regulation made under section 84 for the purposes of this section.

40BL. Approval of list of proposed managers

The Director shall approve a list of proposed managers submitted under section 40BJ(2) if -

- (a) the composition of the proposed incorporated management committee -
 - (i) is consistent with the draft of the constitution of the proposed incorporated management committee as

- approved under section 40BK; and
- (ii) complies with the provisions of this Part; and
- (b) having regard to the grounds prescribed in section 30, he is satisfied that all the proposed managers are fit for registration as a manager of the school.

40BM. Incorporation

- (1) If the Director approves -
 - (a) a draft of a constitution under section 40BK; and
 - (b) a list of proposed managers under section 40BL,he shall -
 - (c) register the proposed managers as managers of the school under section 29; and
 - (d) issue a certificate of incorporation in such form as he may specify.
- (2) With effect from the date of incorporation specified in the certificate of incorporation -
 - (a) the supervisor of the school shall cease to be the supervisor of the school;
 - (b) all managers of the school who hold office as such immediately before that date shall cease to be managers of the school; and
 - (c) the persons registered pursuant to subsection (1)(c) together with such other persons as may be registered from time to time as managers of the school shall be incorporated as the incorporated management committee of the school which shall be established as a body corporate with perpetual

succession.

(3) The incorporated management committee established under subsection (2) shall -

(a) have -

(i) an English name in the form "The Incorporated Management Committee of (*the registered English name of the school*)"; and

(ii) a Chinese name in the form "*(the registered Chinese name of the school)* 法團校董會";

(b) be capable of suing and being sued in its name and, subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer;

(c) have a common seal, the affixing of which shall be pursuant to its resolution and be authenticated by the signatures of the chairperson and one other manager authorized to act for that purpose, either generally or specifically; and

(d) have a registered office at the address of the premises which are specified in the certificate of registration or certificate of provisional registration of the school.

(4) No compensation is payable to any person who ceases to be a supervisor or manager by virtue of the operation of this section.

40BN. Effect of certificate of incorporation

A certificate of incorporation issued under section 40BM shall be conclusive evidence that the incorporated management committee is duly established under this Ordinance.

40BO. Transitional provisions for establishment of incorporated management committee

(1) Schedule 1 has effect in relation to the establishment of the incorporated management committee of a school which does not have a school management company.

(2) The Secretary for Education and Manpower may by notice published in the Gazette amend Schedule 1.

40BP. Dissolution of school management company

(1) This section applies where a school management company has been incorporated before the commencement date for the purposes of operating a school.

(2) On the date of establishment of the incorporated management committee of the school under section 40BM, the school management company of the school is deemed to be dissolved under section 291A(1) of the Companies Ordinance (Cap. 32) as if the Court of First Instance had made on that date an order under that section that the company be struck off the register of companies and dissolved.

(3) The Registrar of Companies shall, on the date of establishment of the incorporated management committee of the school, or as soon as reasonably practicable after that day, strike the school management company of the school off the register of

companies.

(4) This section has effect notwithstanding -

- (a) any provision in the memorandum and articles of association of the school management company governing its winding up or dissolution; and
- (b) the provisions of any other Ordinance.

(5) Sections 291A(2) and 292 of the Companies Ordinance (Cap. 32) shall not apply to a school management company which is deemed under subsection (2) to be dissolved.

**40BQ. Transitional provisions for
dissolution of school
management company**

(1) Schedule 2 has effect in relation to the dissolution of the school management company of a school under section 40BP on the establishment of the incorporated management committee of the school.

(2) The Secretary for Education and Manpower may by notice published in the Gazette amend Schedule 2.

**40BR. Failure to establish incorporated
management committee**

(1) If -

- (a) the sponsoring body of an aided school fails to comply with section 40BJ; or
- (b) the Director refuses to issue a certificate of incorporation under section 40BM in respect of the school,

then -

- (c) the Director may -
 - (i) without prejudice to section 31, cancel

the registration of all or any manager of the school; and

(ii) without prejudice to section 41, appoint one or more persons to be managers of the school for such term as he thinks fit; and

(d) any agreement between the Government and the sponsoring body in relation to the sponsorship, subsidization, management and operation of the school shall, at the option of the Director, terminate on a day specified by him.

(2) The Government shall not incur any civil liability only by reason of the exercise by the Director of his power under subsection (1).

Establishment of incorporated management committee: planned school

40BS. Establishment of incorporated management committee in respect of planned DSS school

The sponsoring body of a DSS school the scheduled opening date of which falls on or after the commencement date may notify the Director in writing of its intention to establish an incorporated management committee in respect of the school.

40BT. Establishment of incorporated management committee in respect of planned non-aided school in receipt of Government subsidies

(1) The sponsoring body of a non-aided school in receipt of Government subsidies the scheduled opening date of which falls

on or after the commencement date may apply in writing for the approval of the Director for establishing an incorporated management committee in respect of the school.

(2) A sponsoring body which makes an application under subsection (1) shall provide to the Director such information as he may reasonably require for determining the application.

(3) The Director may, if he is satisfied that the establishment of an incorporated management committee of the school will be in the interest of the school, grant an approval for the establishment on such conditions (if any) as he thinks fit.

40BU. Sponsoring body to establish incorporated management committee in respect of planned school

(1) Subject to section 40CB, the sponsoring body of a planned school shall make a submission under this section for the establishment of an incorporated management committee in respect of the school before the school comes into operation.

- (2) The sponsoring body shall submit to the Director -
- (a) a draft of the constitution of the proposed incorporated management committee;
 - (b) a list of the proposed managers of the school;
 - (c) an application by each proposed manager for registration as a manager of the school that complies with section 28; and
 - (d) an application for registration of the school under section 11.

- (3) A submission made under subsection (2) shall be made -
- (a) not later than 6 months before the scheduled opening date; or

(b) by such later date as the Director may approve in writing.

(4) The sponsoring body shall provide to the Director such further information relating to the submission as he may reasonably require for the purposes of enabling him to exercise his power under section 40BV or 40BW.

40BV. Approval of draft constitution

The Director shall approve or refuse to approve a draft of a constitution submitted under section 40BU(2) in accordance with any regulation made under section 84 for the purposes of this section.

40BW. Approval of list of proposed managers

The Director shall approve a list of proposed managers submitted under section 40BU(2) if -

(a) the composition of the proposed incorporated management committee -

(i) is consistent with the draft of the constitution of the proposed incorporated management committee as approved under section 40BV; and

(ii) complies with the provisions of this Part; and

(b) having regard to the grounds prescribed in section 30, he is satisfied that all the proposed managers are fit for registration as a manager of the school.

40BX. Incorporation

- (1) If the Director -
- (a) approves a draft of a constitution under section 40BV;
 - (b) approves a list of proposed managers under section 40BW; and
 - (c) registers the school under section 13 or 15,
- he shall -
- (d) register the proposed managers as managers of the school under section 29; and
 - (e) issue a certificate of incorporation in such form as he may specify.

(2) With effect from the date of incorporation specified in the certificate of incorporation, the persons registered pursuant to subsection (1)(d) together with such other persons as may be registered from time to time as managers of the school shall be incorporated as the incorporated management committee of the school which shall be established as a body corporate with perpetual succession.

(3) The incorporated management committee established under subsection (2) shall -

- (a) have -
 - (i) an English name in the form "The Incorporated Management Committee of (*the registered English name of the school*)"; and
 - (ii) a Chinese name in the form "(*the registered Chinese name of the school*) 法團校董會";
- (b) be capable of suing and being sued in its name and,

subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer;

- (c) have a common seal, the affixing of which shall be pursuant to its resolution and be authenticated by the signatures of the chairperson and one other manager authorized to act for that purpose, either generally or specifically; and
- (d) have a registered office at the address of the premises which are specified in the certificate of registration or certificate of provisional registration of the school.

40BY. Effect of certificate of incorporation

A certificate of incorporation issued under section 40BX shall be conclusive evidence that the incorporated management committee is duly established under this Ordinance.

40BZ. Failure to establish incorporated management committee

- (1) If -
 - (a) a sponsoring body fails to comply with section 40BU;
 - or
 - (b) the Director refuses to issue a certificate of incorporation under section 40BX,

any agreement between the Government and the sponsoring body in relation to the sponsorship, subsidization, management and operation of the school shall, at the option of the Director, terminate on a day specified by him.

(2) The Government shall not incur any civil liability only by reason of the exercise by the Director of his option under subsection (1).

40CA. Pre-incorporation contracts

(1) Where a contract purports to have been made in the name or on behalf of an incorporated management committee of a school at a time when the committee has not been established under section 40BX -

- (a) subject to subsection (2) and any express agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the incorporated management committee or as agent for it, and he shall be personally liable on and entitled to enforce the contract accordingly; and
- (b) the incorporated management committee may ratify the contract to the same extent as if it had already been established at that time and as if the contract had been entered into on its behalf by an agent acting without its authority.

(2) Where a contract is ratified by virtue of this section, the person who purported to act for or on behalf of the incorporated management committee in making the contract shall not thereafter be under any greater liability than he would have been under if

he had entered into the contract on behalf of the incorporated management committee as an agent acting without its authority and after its establishment.

40CB. Schools scheduled to open within 6 months from commencement date

(1) If the scheduled opening date of a planned school falls within 6 months from the commencement date -

(a) sections 40BU to 40CA do not apply in relation to the school; and

(b) subject to subsection (2), sections 40BH to 40BR apply in relation to the school as soon as the school commences operation as if it had commenced operation before the commencement date.

(2) Section 40BJ has effect in relation to a school referred to in subsection (1) as if the words "5 years from the commencement date" in that section are substituted by "one year from the date on which the school commences operation".

PART IIIC

DIRECTOR'S POWER

40CC. Director may give directions on certain matters

(1) Without prejudice to section 83(1), the Director may give directions to the incorporated management committee of any school for the purposes of ensuring that the school is managed satisfactorily and the education of the pupils of the school is promoted in a proper manner.

(2) Directions given under subsection (1) may be given to -

- (a) all incorporated management committees;
- (b) the incorporated management committees of a particular type of schools; or
- (c) a particular incorporated management committee.

(3) If the incorporated management committee of a school fails to comply with directions given to it under subsection (1), the school shall be regarded for the purposes of sections 22(1)(e), 31(1)(e)(i) and 41(1)(a) as not being managed satisfactorily."

18. Appointment of managers by Director

Section 41 is amended -

- (a) in subsection (1) -

- (i) by repealing paragraph (b) and substituting -

"(b) that in relation to a school the composition of the management committee or incorporated management committee (as may be appropriate) is such that -

- (i) the school is not likely to be managed satisfactorily; or

- (ii) the education of the pupils of the school is not likely to be promoted in a proper manner;"

- (ii) in paragraph (c), by repealing the comma and substituting "; or";

(iii) by adding -

"(d) that any provision of this Ordinance is being or has been contravened in respect of a school,";

(b) in subsection (3), by adding "or incorporated management committee (as may be appropriate)" before "in respect".

19. Approval of first principal of school

Section 53(1) is amended by adding "or incorporated management committee (as may be appropriate)" after "committee".

20. Grounds for withdrawal of approval of principal

Section 56(1)(d) is amended by repealing "management committee" and substituting "managers of the school".

21. Approval of subsequent principals

Section 57(1) is amended -

(a) in paragraph (d), by repealing "management committee" and substituting "managers of the school";

(b) by adding "or incorporated management committee (as may be appropriate) of the school" before "shall".

22. Section added

The following is added -

"57A. Principal selection committee

(1) This section applies to an IMC school.

(2) Before recommending any person under section 57, the incorporated management committee shall -

- (a) establish a principal selection committee in accordance with subsection (3); and
- (b) invite the principal selection committee to nominate a suitable person for recommendation.

(3) The principal selection committee shall be composed of -

- (a) representatives of the sponsoring body of the school;
- (b) representatives of the incorporated management committee; and
- (c) (where applicable) such other persons as may be provided for in the constitution of the incorporated management committee.

(4) The Director may, on an application and upon good cause shown to his satisfaction, exempt any incorporated management committee from the requirement under subsection (2) in respect of any principal of the school."

23. Functions of principal

Section 58(1) is amended by adding "or incorporated management committee (as may be appropriate)" after "committee".

24. Performance of functions of principal by candidate

Section 58AA(2) is amended by adding "40AH(2)(b)," after "sections".

25. Application for permission to continue to employ serving teachers or principals of aided schools

Section 58B(1) and (2) is amended by adding "or incorporated management committee (as may be appropriate)" after "committee".

26. Director to serve notice of decision on person adversely affected

Section 60(1) is amended, in the Table -

- (a) in the First Column, by repealing "30(1)" and substituting "30(1) or (1A)";
- (b) in the Second Column -
 - (i) by repealing "Supervisor" wherever it appears and substituting "Management authority";
 - (ii) by repealing "Registered manager" and substituting "Manager";
- (c) by adding -

"Section 40BI.	Sponsoring body.
Section 40BK.	Sponsoring body.
Section 40BL.	Sponsoring body.
Section 40BR(1)(c)(i).	Manager concerned.
Section 40BR(1)(c)(ii)	Sponsoring body.
or (d).	
Section 40BT.	Sponsoring body.
Section 40BV.	Sponsoring body.
Section 40BW.	Sponsoring body.
Section 40BZ.	Sponsoring body."

27. Sponsoring body's views take priority over management committee's

Section 72A is amended -

- (a) in subsection (1), by adding "without IMC" before ", in exercising";
- (b) by repealing "贊助" wherever it appears and substituting "辦學".

28. Power of Director to order attendance at primary school or secondary school

Section 74(2A) is amended by adding "or incorporated management committee (as may be appropriate)" after "management committee".

29. Power of Director to direct remedial measures

Section 82(2)(a) is amended by repealing "supervisor and every other" and substituting "management authority and every".

30. Powers of Director to close school or give directions in cases of danger or misconduct

Section 83 is amended -

- (a) in subsection (1), by repealing "any manager" and substituting "the management authority";
- (b) by adding after subsection (1) -

"(1AA) If it appears to the Director that the circumstances mentioned in subsection (1)(a) or (c) exist and the Director serves an order under subsection (1) accordingly, he shall serve a copy of the order on each manager of the school."

31. Regulations

Section 84 is amended -

(a) in subsection (1) -

(i) by adding -

"(1a) the establishment of
parent-teacher associations;

(1b) the recognition of alumni
associations for the purposes of
section 40AN;" ;

(ii) in paragraph (p), by adding "and incorporated
management committees" after "committees";

(iii) by adding -

"(pa) approval of constitutions of
incorporated management
committees;" ;

(iv) in paragraphs (u) and (v), by repealing
"supervisors" and substituting "management
authorities";

(b) by repealing subsection (4) and substituting -

"(4) The Director may -

(a) by notice in writing to the management
authority of any school, waive wholly
or partly the requirements of any
regulation in respect of the school; or

(b) by notice in writing to the management
authority of a particular type of school,
waive wholly or partly the requirements
of any regulation in respect of that type
of school."

32. Offences and penalties

Section 87 is amended -

(a) by adding before subsection (1) -

"(1A) Without prejudice to the prosecution of any other person, an incorporated management committee is not to be held liable for any offence under this Ordinance.";

(b) in subsection (1) -

(i) in paragraph (a), by repealing "or a manager of";

(ii) by adding -

"(aa) manages or takes any part in the management of a school which is not registered or provisionally registered;";

(iii) in paragraph (i), by repealing "any other";

(c) in subsection (3)(d), by adding "or 40AJ(1)(b)" before the semicolon;

(d) in subsection (3A)(a), by repealing "which contravenes" and substituting "or incorporated management committee which fails to comply with a notice under";

(e) by adding -

"(6) If an incorporated management committee -

(a) fails to comply with any notice served on it under section 82; or

(b) does any act which, if done by any person other than an incorporated

management committee, would constitute an offence under subsection (1)(d), (h) or (k), every manager of the school shall be guilty of an offence and shall be liable on conviction to a fine of \$250,000 and to imprisonment for 2 years.

(7) If an incorporated management committee -

(a) contravenes section 18(2) or (3), 53(1) or 57(1); or

(b) does any act which, if done by any person other than an incorporated management committee, would constitute an offence under subsection (3)(a), (f), (g), (l) or (n),

every manager of the school shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2 years.

(8) If an incorporated management committee contravenes subsection (2)(a), every manager of the school shall be guilty of an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(9) If an incorporated management committee does any act which, if done by any person other than an incorporated management committee, would constitute an offence under subsection (3A)(a) or (b), every manager of the school shall be guilty

of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months.

(10) If a person is charged under subsection (6), (7), (8) or (9), it shall be a defence to the charge if he proves that -

- (a) the relevant failure, contravention or act was committed or done without his knowledge or consent; or
- (b) he took all reasonable steps to prevent the failure, contravention or act."

33. Schedules 1 and 2 added

The following are added -

"SCHEDULE 1 [s. 40B0]

1. Interpretation

In this Schedule -

"transferee" (受讓方) means the incorporated management committee of the relevant school;

"transition date" (交接日) means the date on which the incorporated management committee of the relevant school is established.

2. Pre-incorporation contract

Where -

- (a) any person enters into a contract with another party

for the supply of goods or service for the benefit of a school before the transition date;

- (b) he enters into the contract with the written authority of the management committee or school sponsoring body of the school;
- (c) before he enters into the contract he advises the other party that the incorporated committee of the school will on the commencement of the transition date become a party to the contract by virtue of this section; and
- (d) the contract is subsisting immediately before the transition date,

the following provisions apply on the commencement of the transition date -

- (e) the committee shall for all purposes substitute for the person as the party to the contract and shall be regarded as having always been the party;
- (f) all rights and liabilities of the person under the contract shall vest in the committee; and
- (g) the person shall cease to be a party to the contract.

3. Continuance of employment

(1) Without limiting section 2, a person who is employed to work for a school immediately before the date of the establishment of the incorporated committee of the school under section 40BM of this Ordinance shall on the commencement of that

date be deemed to have been employed by the committee on the same terms and conditions of the employment subsisting immediately before that date.

(2) The incorporated management committee shall, for the purposes of the continuation of the employment referred to in subsection (1), be regarded as having always been the employer of the person since the commencement of the employment and, accordingly, there is no break or interruption in the employment only because of the operation of this section.

(3) The -

(a) employment may be terminated; or

(b) terms and conditions of the employment may be varied,

on or after the transition date in the same manner and to the same extent as immediately before that date.

4. Delivery of books, etc.

(1) On the transition date, the transferee becomes the owner of all books, accounts, receipts or other document (however compiled, recorded or stored) relating to the management of the school.

(2) All such books, accounts, receipts or other document shall be delivered to the transferee immediately after that date by the person who has the care and custody of them otherwise than pursuant to a lawful authority.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine at level

3 and to imprisonment for 3 months.

SCHEDULE 2

[s. 40BQ]

1. Interpretation

In this Schedule -

"transferee" (受讓方) means the incorporated management committee of the relevant school;

"transferor" (轉讓方) means the school management company of the relevant school;

"transition date" (交接日) means the date on which the incorporated management committee of the relevant school is established.

2. Vesting of properties, etc.

(1) All properties, rights, obligations and civil liabilities of the transferor which are subsisting immediately before the transition date shall on the commencement of the transition date vest in the transferee.

(2) For the purposes of the vesting effected by subsection (1), the transferee shall be regarded as having always been the transferor since the establishment of the transferor.

(3) The Stamp Duty Ordinance (Cap. 117) shall not apply to any vesting effected by subsection (1).

(4) The vesting in the transferee of any properties, rights, obligations and liabilities under subsection (1) does not constitute an assignment, transfer, devolution, parting with

possession, dealing with or other disposition of such properties, rights, obligations and liabilities for the purposes of any instrument concerning or affecting such properties, rights, obligations and liabilities.

(5) A provision contained in any deed, contract or other document made by the transferor -

- (a) prohibiting or requiring any consent or approval for the vesting effected by subsection (1); or
- (b) to the effect that a default shall occur or be deemed to occur, or any right or obligation shall cease, as a result of the vesting effected by subsection (1),

is deemed to have been waived.

(6) The vesting in the transferee of an interest in land effected by subsection (1) does not -

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to any right of pre-emption, right of forfeiture, right of re-entry, option, damages or other right of action affecting land;
- (c) invalidate or discharge any contract or security;
- (d) operate so as to merge any leasehold interest in the reversion expectant on it; or
- (e) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in

equity.

(7) The transferee shall register or cause to be registered in the Land Registry a Government Printer's copy of this Ordinance in respect of vesting of any interest in land effected by subsection (1).

3. Continuance of employment

(1) A person who is employed to work for a school immediately before the transition date shall on the commencement of the transition date be deemed to have been employed by the transferee on the same terms and conditions of the employment subsisting immediately before that date.

(2) The incorporated management committee shall be regarded as having always been the employer of the person since the commencement of the employment referred to in subsection (1) and, accordingly, there is no break or interruption in the employment only because of the operation of this section.

(3) The -

(a) employment may be terminated; or

(b) terms and conditions of the employment may be varied,

on or after the transition date in the same manner and to the same extent as immediately before that date.

4. Validity of acts already commenced

(1) Nothing in this Ordinance affects the validity of anything done by, on behalf of or in relation to the transferor before the transition date.

(2) If anything is in the process of being done by, on behalf

of or in relation to the transferor immediately before the transition date, it may be carried on or completed by, on behalf of or in relation to the transferee.

5. Continuance of pending civil proceedings

(1) Civil proceedings commenced by or against the school or the transferor before the transition date may be continued or enforced on or after that date by or against the transferee as if the transferee was a party to the proceedings.

(2) All claims and defences that were available to the school or the transferor are available to the transferee.

6. Evidence: books and documents

(1) Subject to Article 11(2)(g) of the Hong Kong Bill of Rights set out in the Hong Kong Bill of Rights Ordinance (Cap. 383), books and other documents which would, before the transition date, have been evidence in respect of any matter for or against any one or more of the following parties, are admissible in evidence in respect of the same matter for or against the transferee -

(a) the school;

(b) any person in his capacity as the supervisor or a manager or former manager of the school; or

(c) the transferor.

(2) In this section, "documents" (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

7. Effect of existing agreements, etc.

(1) This section applies to any agreement, arrangement or contract made or entered into or transaction effected by, on behalf

of or in relation to the transferor before the transition date.

(2) If an agreement, arrangement, contract or transaction to which this section applies is in force or effective immediately before the transition date or it is to take effect on or after that date, it shall have effect as from that date as if it were made, entered into or effected by, on behalf of or in relation to the transferee.

8. Record of property

The record of property of the transferor, which is in the form of an entry in the books of a bank, company or other corporation immediately before the transition date, shall be transferred in those books by the bank, company or corporation to the transferee upon the transferee's request.

9. Delivery of books, etc.

(1) On the transition date, the transferee becomes the owner of all books, accounts, receipts or other document (however compiled, recorded or stored) relating to the management of the school.

(2) All such books, accounts, receipts or other document shall be delivered to the transferee immediately after that date by the person who has the care and custody of them otherwise than pursuant to a lawful authority.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months."

Education Regulations**34. Interpretation**

Regulation 2 of the Education Regulations (Cap. 279 sub. leg.) is amended by adding -

““responsible person” (負責人) means, in relation to -

- (a) school without IMC, the supervisor of the school;
- (b) an IMC school, the principal of the school;”.

35. Safety precautions

Regulation 21(2) is amended by repealing “supervisor and”.

36. Notice requiring safety equipment against fire

Regulation 37 is amended -

- (a) by renumbering it as regulation 37(1);
- (b) in paragraph (1), by repealing everything after “Department” and substituting a full stop;
- (c) by adding -

“(2) A notice under paragraph (1) shall be served on the management committee or incorporated management committee (as may be appropriate) of the school concerned.

(3) A management committee or incorporated management committee on which a notice under paragraph (1) is served shall comply with the notice.”.

37. Fees other than inclusive fee prohibited

Regulation 61 is amended -

(a) in paragraph (2), by repealing "A supervisor or manager" and substituting "A management authority";

(b) by adding -

"(3) The Director may grant an approval under this regulation on his own motion or upon an application."

38. Prohibition of collections without permission of Director

Regulation 66 is amended -

(a) in paragraph (2), by adding "incorporated management committee," before "manager";

(b) by adding -

"(3) The Director may grant a permission under this regulation on his own motion or upon an application."

39. Part amended

Part XII is amended by repealing -

"PART XII

SCHOOL MANAGEMENT COMMITTEES AND SUPERVISORS"

and substituting -

"PART XIA

CONSTITUTION OF MANAGEMENT COMMITTEES AND INCORPORATED MANAGEMENT COMMITTEES".

40. Regulation added

The following is added immediately before regulation 75 -

"74A. General provisions

(1) The Director may by notice require a constitution approved under this Part to be altered or amended in such manner as he may specify, and any such constitution shall be altered or amended accordingly by the managers.

(2) The notice mentioned in paragraph (1) shall be served on the management authority.

(3) A constitution approved under this Part shall -

(a) be binding upon the school, the management committee or incorporated management committee (as may be appropriate), the managers and teachers; and

(b) shall not be altered or amended without the prior approval in writing of the Director."

41. Constitution of school management committees

Regulation 75 is amended -

(a) in paragraph (1), by repealing ", require the managers of any" and substituting "of a school without IMC, require the managers of the";

(b) by repealing paragraphs (3) and (4).

42. Regulation added

The following is added -

"75A. Constitution of incorporated management committee

(1) In considering the draft constitution of a proposed

incorporated management committee under section 40BK or 40BV of the Ordinance, the Director shall not approve the draft unless he is satisfied that operation of the committee in accordance with the constitution is likely to be satisfactory.

(2) Without limiting paragraph (1), the Director may refuse to approve the constitution if it does not provide for any of the following -

- (a) the number of each category of managers in the composition of the committee;
- (b) the procedures for nominating or electing persons for registration as managers;
- (c) the procedures for making a request to the Director 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 chairperson, the secretary and the treasurer;
- (e) the duties of the chairperson, the secretary and the treasurer;
- (f) the tenure of office of the managers;
- (g) the procedures for appointment of members of the principal selection committee;
- (h) the filling of vacancies in managers;
- (i) matters relating to the re-nomination or re-election of managers;
- (j) the appointment of auditor;
- (k) meetings and proceedings of the committee; or
- (l) the procedures for amending the constitution.

(3) The provisions of this regulation are made for the

purposes of sections 40BK and 40BV of the Ordinance."

43. Part heading added

The following is added before regulation 76 -

"PART XII
APPOINTMENT OF TEACHERS".

44. Majority vote in certain cases

Regulation 76 is amended by repealing "members of the management committee" and substituting "managers".

45. Director may disapprove

Regulation 81 is amended by repealing "supervisor forbid" and substituting "responsible person forbid".

46. List of holidays to be posted

Regulation 83 is amended -

- (a) in paragraph (1), by adding "without IMC" after "school";
- (b) in paragraph (3), by adding ", where the school is a school without IMC," after "and".

47. Syllabus and time-table subject to approval of Director

Regulation 92(8) is amended by repealing "the supervisor and to".

48. Expulsion and suspension of pupils

Regulation 96 is amended -

- (a) in paragraph (1), by repealing "supervisor and";
- (b) in paragraph (2), by repealing "or supervisor".

49. Business or trading operations

Regulation 99A is amended -

(a) in paragraphs (1) and (3), by repealing "manager or" and substituting "manager, management committee or incorporated";

(b) by adding -

"(3A) A permission granted by the Director for the purposes of paragraph (1) or (3) may be granted in respect of any school or any type of school in receipt of public funds.

(3B) The Director may grant a permission under this regulation on his own motion or upon an application."

50. Offences

Regulation 101 is amended -

(a) in paragraph (2), by repealing "registered";

(b) in paragraph (3) -

(i) by repealing "37" and substituting "37(3)";

(ii) by repealing "registered";

(c) by adding -

"(3A) If the management committee of a school contravenes regulation 99A(1) or (3), each manager of the school shall be guilty of an offence.

(3B) If the incorporated management committee of a school contravenes regulation 53(1), 61, 63, 64, 66(2), 77 or 99A(1), (2) or (3), each manager of the school shall be guilty of an offence."

(d) in paragraph (4), by repealing "who contravenes

regulation 21(1) or (2)" and substituting "without IMC who contravenes regulation 21(1)";

(e) in paragraph (5), by repealing "who contravenes regulation 21(2)" and substituting "without IMC who contravenes regulation 21(1) or (2)";

(f) by adding -

"(5A) Any principal of an IMC school who contravenes regulation 21(1) or (2), 32, 38, 39(1), 52(1), 53(2), 79, 81, 82, 83(2) or (3) or 92(2) or (12) shall be guilty of an offence.

(5B) If regulation 92(9) is contravened in respect of any school, the principal of the school shall be guilty of an offence.";

(g) in paragraph (6), by repealing everything after "92(4)" and substituting -

"or 95(2) is contravened -

(a) in respect of a school without IMC, the supervisor of the school shall be guilty of an offence;

(b) in respect of any school, the principal of the school shall be guilty of an offence.";

(h) in paragraph (6A), by repealing ", or any person who is a member of a management committee which,";

(i) by repealing paragraph (9) and substituting -

"(9) If a manager is charged with an offence under paragraph (3), (3A) or (3B) by reason of a contravention of any regulation, it shall be a defence to the charge if he proves that -

- (a) the regulation was contravened without his knowledge or consent;
or
- (b) he took all reasonable steps to prevent the contravention of the regulation."

51. Penalties

Regulation 102(2) is amended by repealing "The supervisor or principal of a school" and substituting "A person".

52. Appeals to Appeals Board

The Fourth Schedule is amended, in paragraph 1, in column 2 of the table -

- (a) by repealing "Supervisor" where it first appears and substituting "Principal";
- (b) by repealing "Supervisor" where it secondly appears and substituting "Management authority".

Grant Schools Provident Fund Rules

53. Interpretation

Rule 2(1) of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg.) is amended by repealing the definition of "DSS school".

Subsidized Schools Provident Fund Rules

54. Interpretation

Rule 2(1) of the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.) is amended by repealing the definition of "DSS school".

55. Substitution of "management authority" for "supervisor"

The provisions set out in Schedule 1 are amended by repealing "supervisor" wherever it appears and substituting "management authority".

56. Substitution of "responsible person" for "supervisor"

The provisions set out in Schedule 2 are amended by repealing "supervisor" wherever it appears and substituting "responsible person".

57. Substitution of "manager" for "registered manager"

The provisions set out in Schedule 3 are amended by repealing "registered manager" and substituting "manager".

SCHEDULE 1

[s. 55]

SUBSTITUTE "MANAGEMENT AUTHORITY" FOR "SUPERVISOR"

Education Ordinance (Cap. 279)

Sections 18(1), (2) and (3), 18A(1) and (2), 20(1) and (6), 21(2) and (3), 49(1)(a), 50(1)(a), 66(1)(a), (d) and (e) and 91(1)(c) and (d).

Education Regulations (Cap. 279 sub. leg.)

Regulations 15(1), (2)(a) and (b) and (3), 44, 48(2), 53(1), 56(6), 60, 60A(1)(ii), 61(1), 62(2), 63, 64, 77, 78, 91(2), 94, 98(2) and 99A(2).

Grant Schools Provident Fund Rules (Cap. 279 sub. leg.)

Rules 8(2), (2A) and (3), 9(3) and 9A(3).

Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.)

Rules 8(2), (2A), (3), (4) and (5), 9(3) and 9A(3).

SCHEDULE 2

[s. 56]

SUBSTITUTE "RESPONSIBLE PERSON" FOR "SUPERVISOR"

Education Regulations (Cap. 279 sub. leg.)

Regulations 3, 20, 21(1), 23, 52(2), 57(1), (2) and (3), 79, 82, 89(2) and 92(2), (3), (10) and (12).

SCHEDULE 3

[s. 57]

SUBSTITUTE "MANAGER" FOR "REGISTERED MANAGER"

Education Ordinance (Cap. 279)

Sections 3(1)(definition of "supervisor"), 8(1)(d)(i) and (ii), 35(2), 36(a) and (d), 38(1) and (2), 38A(1) and (2), 40 and 87(4).

Explanatory Memorandum

This Bill amends the Education Ordinance (Cap. 279) ("the Ordinance") to facilitate the implementation of school-based management and introduce certain minor amendments set out in the long title.

2. The main objects of the Bill are -

- (a) to provide for the incorporation of the managers of a school as a separate legal entity to be known as incorporated management committee ("IMC") and to define the roles of the school sponsoring bodies ("SSB") of the schools and the IMCs;
- (b) to require the establishment of an IMC in every operating aided school within 5 years from the enactment of the Bill, and to require the establishment of an IMC in every planned aided school before the school commences operation;
- (c) to allow a school that has joined the Direct Subsidy Scheme ("DSS school") and a school other than an aided school and DSS school which receives subsidies from the Government ("a non-aided school in receipt of Government subsidies") to establish an IMC for the purpose of managing the school;
- (d) to provide for the composition of IMCs to include the following key stakeholders : SSB members, elected parent members, elected teacher members, the principal (ex-officio member), alumni and independent community members;
- (e) to make provisions for the constitution and operation of IMCs and for the managers;
- (f) to provide for the establishment of principal selection committees for the purposes of appointment of the principal of a school having an IMC ("IMC school");
- (g) in relation to an IMC school, to transfer the functions of the supervisor to the IMC;
- (h) to transfer certain functions of supervisors under the

Education Regulations (Cap. 279 sub. leg.)("the Regulations") to the principals; and

- (i) to empower the Director of Education ("the Director") to give direction to an IMC school.

Some of the more important clauses are explained below.

3. Clause 2 amends certain definitions under the Ordinance and introduces new definitions. In particular -

- (a) a new definition of "management authority" is added. It means the IMC in relation to an IMC school, or the supervisor in other cases;
- (b) the definition of "manager" is amended to exclude any person who is not registered as such.

4. Clause 3 requires the Director to maintain a register of IMCs and to make the register available for public inspection.

5. Clauses 7, 32 and 50 relate to certain provisions of the Ordinance and of the Regulations that impose criminal liability on a supervisor where he fails to discharge a specified duty. As regards IMC schools, these provisions are amended so that the duty is imposed on the IMC while the criminal liability for failing to discharge the duty is imposed on each of the managers making up the IMC. However, a manager who is charged with an offence under the amended provisions may raise a statutory defence that the offence is committed without his knowledge or consent, or that he has taken all reasonable steps to prevent the commission of the offence.

6. Part III of the Ordinance comprises sections 27 to 41. Clauses 9, 10 and 14 re-organize sections 27 to 40 into two new parts -

- (a) Part III, comprising sections 27 to 31, which deals with registration of managers; and
- (b) Part IIIA, comprising sections 31A to 40, which deals

with management of schools by managers who are not incorporated as IMCs.

7. Clause 12 introduces new grounds on which the Director may or must refuse to register a person as a manager of a school.

8. Clause 13 introduces new grounds on which the Director may or must cancel the registration of a manager.

9. Clause 17 introduces two new parts -

(a) Part III B deals with management of schools by IMCs. The provisions of this Part is grouped under a number of subheadings -

(i) General provisions

These cover definitions, functions of sponsoring body and IMC as well as powers of IMC.

(ii) Composition of IMC

These provisions set out the categories of managers that an IMC must be composed of. They also lay down a general rule that the total number of managers nominated by the sponsoring body of a school must not exceed 60% of the maximum number of managers that is allowed under the constitution of the IMC.

(iii) Election and nomination of managers and vacation of office

These provisions provide for the different ways in which different categories of managers are nominated or elected for registration.

(iv) Operation of IMC

These provisions relate to operational matters in relation to IMCs, such as

delegation of functions, maintenance of accounts and dissolution.

(v) Provisions relating to managers

These provisions apply specifically to managers of IMC schools. For instance, such managers are required to declare and disclose personal interests to avoid conflict of interests.

(vi) Establishment of IMC: operating schools

"Operating school" is defined to include 3 types of schools -

- (A) an aided school that commences operation before the commencement date (i.e. the date on which the provisions of this Ordinance comes into effect);
- (B) a DSS school that commences operation before the commencement date if the sponsoring body of the school has notified the Director of its intention to establish an IMC; or
- (C) a non-aided school in receipt of Government subsidies that commences operation before the commencement date if the sponsoring body has the Director's approval to establish an IMC.

A duty is imposed on the sponsoring body of an operating school which is an aided school to establish an IMC within 5 years from the commencement date.

On the establishment of an IMC, the previous registrations of all managers will be cancelled. Further, where a management company has been formed under the Companies Ordinance (Cap. 32) to operate the school, the rights and liabilities of the company will be transferred to the IMC and the company will be deemed dissolved.

If an IMC is not established as required, the Director may, among other things, cancel the registrations of the managers of the school and terminate the sponsorship agreement with the sponsoring body.

(vii) Establishment of IMC: planned schools

"Planned school" is also defined to include 3 types of schools -

- (A) an aided school that is scheduled to commence operation on or after the commencement date;
- (B) a DSS school that is scheduled to commence operation on or after the commencement date if the sponsoring body of the school has notified the Director of its intention to establish an IMC;
or
- (C) a non-aided school in receipt of Government subsidies that is scheduled to commence operation on or after the commencement date if the sponsoring body

has the Director's approval for establishing an IMC.

A duty is imposed on the sponsoring body of a planned school to establish an IMC before the school commences operation.

If a planned school is scheduled to commence operation within 6 months from the commencement date, it is difficult to ensure that an IMC is established before the school commences operation. In such case, the sponsoring body is allowed to establish an IMC within one year from the date on which the school commences operation.

If an IMC is not established as required, the Director may terminate the sponsorship agreement with the sponsoring body.

(b) Part IIIC comprises two provisions - a new provision that gives the Director the power to give directions to IMCs and section 41 of the Ordinance as amended.

10. Clause 22 adds a new section 57A. Before recommending any person to be the principal of a school, the IMC is required to establish a principal selection committee for the purpose of nominating a suitable candidate.

11. Clause 31 enables the Director to waive the requirements of the Regulations.

12. Clause 33 adds 2 schedules to the Ordinance. Schedule 1 contains transitional provisions that are applicable where an IMC is established in respect of a school whose school management committee has not been

incorporated under the Companies Ordinance (Cap. 32). Schedule 2 contains transitional provisions that are applicable where an IMC is established in respect of an operating school whose school management committee has been so incorporated.

13. Clause 42 adds a new regulation 75A to the Regulations. The new provision sets out the matters that an IMC constitution must provide for.

14. Clause 55 and Schedule 1 deal with the substitution of "supervisor" by "management authority" in various provisions of the Ordinance and the subsidiary legislation made under the Ordinance.

15. Clause 56 and Schedule 2 deal with the substitution of "supervisor" by "responsible person" in various provisions of the Regulations.

16. Clause 57 and Schedule 3 deal with the substitution of "registered manager" by "manager" in various provisions of the Ordinance.