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**Paper for the House Committee meeting
on 25 June 2004**

**Report of the Bills Committee on
Education (Amendment) Bill 2002**

Purpose

This paper reports on the deliberations of the Bills Committee on Education (Amendment) Bill 2002.

Background

2. The Government has been promoting school-based management (SBM) since 1991, and schools are encouraged to participate on a voluntary basis. 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, the Government considers there is a need to ensure that there are proper checks and balances to govern school management. To this end, the then Education Department set up an Advisory Committee on School-based Management (ACSBM) under the Board of Education in 1998 to draw up an SBM framework for aided schools.

3. ACSBM released 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 decision making, more transparent and accountable school governance structure. However, a fair number of school sponsoring bodies (SSBs) expressed reservations about certain aspects of the proposed framework, in particular, the devolution of responsibilities to school management committees (SMCs) and election of parent and teacher members to SMCs.

4. ACSBM revised some of its proposals to address, as far as possible, the concerns of 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.

The Bill

5. The Bill seeks to amend the Education Ordinance (Cap. 279) to facilitate the implementation of SBM and introduce certain minor amendments.

The Bills Committee

6. At the House Committee meeting on 6 December 2002, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon Cyd HO, the Bills Committee has held 36 meetings with the Administration up to 23 June 2004. It has also met with representatives of 38 organisations including 13 SSBs and 18 parent-teacher federations or parent-teacher associations (PTAs) and five individuals. A list of the organisations and individuals who have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

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Underlying principles of SBM

8. The Administration has explained that the underlying principles of SBM are to provide all key stakeholders, i.e. SSBs, principals, teachers, parents,

alumni and independent members, participatory decision making in such areas as school policies, strategic planning, human resources, finance as well as self-evaluation. This will improve the transparency and accountability of school management, leading to better school management and enhanced teaching effectiveness.

Justifications for establishing a statutory framework for SBM

9. Members and a number of deputations have asked the Administration to elaborate on the justifications for establishing a statutory framework for the implementation of SBM in place of the existing practice which allows schools to decide when and how parents and teachers would be invited to participate in school management.

10. The Administration has pointed out that from 1991 to 1997, a School Management Initiative (SMI) Scheme was implemented to establish in schools a participatory SBM framework. A total of 334 schools (about 30%) joined the Scheme on a voluntary basis. However, despite the Administration's efforts in promoting participatory governance for over 10 years, only 65 schools participating in the Scheme included teacher and parent managers in their SMCs. The majority of the remaining schools adopted a wait-and-see attitude.

11. According to the Administration's data in April 2003, the percentages of schools with teacher, parent and alumni managers in their SMCs were 22, 17 and 17 respectively. As the participation rate of teachers, parents and alumni is still low, the Administration considers it necessary to strengthen the participation of key stakeholders in SBM through legislation.

12. The Administration has also pointed out that the Government has spent huge resources on school education every year (approximately \$38 million for an aided secondary school and \$22 million for an aided primary school). With the implementation of SBM, schools have been devolved with greater autonomy in their operation, including the appointment and promotion of teachers and deployment of resources for long-term planning. The Administration considers that legislation can ensure the effective use of public funds and flexibility in deployment of resources.

13. Moreover, since schools constitute a major part of an education system, the Administration is of the view that their governance structure must be clearly defined in law. The existing Education Ordinance has also defined the responsibilities of SMCs, the duties of supervisors and functions of principals, etc. Hence, the SBM governance structure should also be provided with a legal basis. The Administration has pointed out that legislation not only protects the rights of participation of key stakeholders in school management, it will also ensure that key stakeholders have a better understanding of school operation by setting out the powers and responsibilities of every party.

14. The Administration has further explained that the existing Education Ordinance does not offer any protection to school managers from their legal liabilities. To improve the current situation, it is necessary to legislate the establishment of IMCs in order to provide adequate protection to school managers.

15. As regards the alternative of incorporating the SBM governance framework requirements in the Codes of Aid, the Administration considers it not feasible. If a school violates the Code, the Administration can only reduce its subsidies, which will affect the interests of students. It might also eventually end up with a judicial review.

16. Some members have suggested incorporating SMCs under the Companies Ordinance as a corporate body. The Administration has pointed out that this will entail extra administrative work for schools, such as putting in place a memorandum and articles of association, filing annual returns to the Companies Registry and paying registration fee, in order to comply with the requirements under the Companies Ordinance.

17. In view of the above reasons, the Administration has concluded that it should implement the SBM governance framework by going through the legislative route and requiring all aided schools to establish an IMC and implement SBM fully.

Power and functions of SSBs

18. Members have asked the Administration to clarify whether an IMC constitution can contain provisions empowering the SSB to dissolve an IMC which fails to perform its functions in a satisfactory manner or carry out the vision and mission set by the SSB. Members have also asked the Administration to consider whether the SSB should be empowered to veto the decision of the IMC which the SSB considers to be at variance with the vision and mission of the school.

19. The Administration has pointed out that the Bill already sets out the functions and responsibilities of the SSB, including -

- (a) setting out the vision and mission for the school;
- (b) maintaining full control of the use of funds and assets owned by it;
- (c) giving general directions to the IMC in the formulation of education policies of the school and overseeing the performance of the IMC;
- (d) being responsible for drafting the IMC constitution;

- (e) making up to 60% of IMC membership; and
- (f) making a written request to the IMC to issue a notice to PSEM to cancel the registration of an SSB manager.

In addition, the Bill provides that the IMC is responsible for ensuring that the mission of the school set by the SSB is carried out and is accountable to the SSB for the performance of the school. The SSB also has the power to appoint the IMC chairperson and may specify in its own constitution the duties, nomination and cancellation of registration of SSB managers. It can also exert its influence in steering the IMC through the SSB managers.

20. The Administration considers the above measures adequate for SSBs to ensure that managers and IMCs perform their functions satisfactorily. It does not consider it necessary or appropriate for the IMC constitution to provide SSBs with the power to dissolve the IMC or to specify that SSBs can veto the decisions of IMCs.

Relationship between SSBs and IMCs

21. Members have asked the Administration to explain the type of "general directions" an SSB can give to an IMC under proposed section 40AD(1)(e) in the formulation of education policies of the school. Some examples given by the Administration are as follows -

- (a) guidance on the directions and priorities of school development;
- (b) guiding principles on home-school co-operation, e.g. request a school to set up a PTA;
- (c) other criteria apart from the mandatory requirements with regard to the selection of the principal; and
- (d) instruction on the staff appraisal policy to tie in with the direction of school development.

22. Members have asked the Administration to explain how it will resolve possible conflict between an SSB and an IMC if they hold different educational ideals and are not cooperating to work towards the vision and mission of the school. The Administration has pointed out that since the SSB is to draft the IMC constitution and its representatives may make up to 60% of the maximum number of managers, the SSB should be able to steer the IMC. The Administration is of the view that the situation envisaged by members is very unlikely to happen. However, should IMC members hold different views when discussing a certain issue and cannot come to a consensus, they should always refer to the school's vision and mission and act in the best interest of the

pupils. If necessary, PSEM may give appropriate directions to the IMC.

23. The Administration has further pointed out that if the SSB is not satisfied with the proposals of the IMC in managing the school, it can exercise its influence on the decisions of the IMC through the SSB managers who may make up to 60% of the maximum number of managers. If the SSB managers are found not working in accordance with the vision and mission of the SSB or not following its instructions, the SSB may exercise its power under proposed section 40AV to cancel the registration of the relevant SSB manager and nominate another manager.

24. Furthermore, the SSB may also notify PSEM of any improper act or mismanagement of the IMC. If necessary, staff of the Regional Education Office of the Education and Manpower Bureau (EMB) will conduct an investigation. Section 82 of the Education Ordinance provides that if it appears to PSEM that a school is not being managed satisfactorily, or the education of the pupils of a school is not being promoted in a proper manner, or any provision of the Education Ordinance has been contravened in respect of a school, PSEM may give such directions to the school as he thinks necessary to remedy the situation.

Power of SSB over employment of teaching staff

25. Members have pointed out that there is a need to provide for the transfer of principals and teachers between schools under the same SSB for the professional development of the person concerned or to avoid or alleviate over-establishment due to the reduction of classes in the school concerned. The Administration has proposed a new section 40AEA to provide that the SSB of a school which is also the SSB of another school may request the IMC of the first-mentioned school to terminate the employment of a person as the principal or teacher of the school. In the case of a principal, the SSB may request the IMC of the other school to recommend for approval the person to be the principal of the school under section 53 or 57. In the case of a teacher, the SSB may request the other school to employ the person as a teacher of the same rank of the school. Such a request cannot be made unless the action is conducive to the professional development of the person concerned or is necessary to avoid or alleviate over-establishment due to the reduction of classes in the school concerned. An IMC shall take such action within its lawful authority as is necessary to comply with such request.

Appointment of school managers by SSB

26. Members have pointed out that large SSBs may face practical difficulties in appointing sufficient representatives to an IMC to make up 60% of the maximum number of managers in each of its sponsored schools, having regard to the proviso that a school manager cannot serve on more than five IMCs.

27. The Administration has informed members that the five largest SSBs each operates over 30 schools. Assuming that seven SSB managers in the IMC will make up 60% and each manager serves on five schools, the number of existing managers of the two largest SSBs is sufficient to make up 60% of the maximum number of managers in each of its sponsored schools. The remaining three have expressed that they will make plans to resolve the problems.

28. As regards other possible operational problems, the Administration has explained that proposed section 40AD already empowers the SSB to give general directions, co-ordinate and monitor the performance of an IMC in the formulation of education policies. The SSB may stipulate in the IMC constitution that the IMC has to submit a report to the SSB. The SSB may also enter into a more detailed agreement with the IMC in managing the school. As SSB managers are appointed by the SSB, the SSB may state clearly the duties and responsibilities of SSB managers in the IMC constitution and the appointment letters issued to the relevant managers. The Administration has also pointed out that large SSBs usually employ full-time administrative staff to help resolve operational difficulties. Such staff may be exempted from the requirement that a manager cannot serve on not more than five IMCs.

Powers of IMC

Personnel matters

29. Members have asked the Administration to consider improving proposed section 40AE(2)(b) to specify that IMCs should be subject to the respective Codes of Aid for primary, secondary and special schools in determining the terms and conditions of employment for their teaching staff under the approved establishment. To address the concern of members, the Administration has proposed to add two new subsections to section 40AE. New subsections (4) and (5) set out clearly that IMCs would be subject to the respective Codes of Aid for primary, secondary and special schools in determining the terms and conditions of employment for their teaching staff under the approved establishment.

Use and investment of funds

30. Proposed section 40AE provides that an IMC 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 (section 40AE(2)(a));
- (b) borrow money in such manner and on such security and terms as may be expedient (section 40AE(2)(f));

- (c) 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 (section 40AE(2)(h)); and
- (d) enter into any contract, agreement or arrangement (section 40AE(2)(i)).

31. Some deputations have expressed concern about the above powers and have suggested that the IMC constitution should allow an SSB to restrict the powers of an IMC. Members have asked the Administration to delineate clearly the powers between the SSB and IMC in handling school assets and properties, loans, fund-raising and contracts in order to address the concern of SSBs.

32. The Administration has accepted the above suggestion and request. It will move amendments to clearly define that the IMC can only handle government funds and assets in the capacity of a trustee. An IMC shall exercise its power subject to any guideline issued by the SSB of the school for raising funds including borrowing money, or for entering into any contract, agreement or arrangement involving non-Government funds. As requested by members, the Administration will provide IMCs with guidelines on the handling of non-government funds after the enactment of the Bill.

Power of PSEM

33. Proposed section 40CC provides that without prejudice to section 83(1), PSEM may give directions to the IMC of any school for the purpose of ensuring that the school is managed satisfactorily and the education of the pupils of the school is promoted in a proper manner. Proposed section 40AE(3)(b) provides that the exercise of the power of an IMC shall be subject to any direction given by PSEM under section 40CC.

34. Having regard to the fact that PSEM may give directions to the IMC of any school for the purposes of ensuring that the school is operated satisfactorily or the education of the pupils of the school is promoted in a proper manner under existing section 82(1), members have questioned the need for a similar provision under proposed section 40CC. On review, the Administration has agreed to delete proposed sections 40AE(3)(b) and 40CC.

Designating the IMC chairperson as the supervisor

35. Some SSBs have expressed concern as to whether an IMC school could retain the post of supervisor, who mainly serves as a channel of communication between the management committee and EMB. Although the Administration has advised that an IMC school may retain the post of supervisor, if deemed necessary, and have the role and functions of the supervisor clearly defined in

the IMC constitution, members remain concerned about the delineation of functions of the supervisor and the IMC chairperson. In view of the similarity of the role of the supervisor as stipulated in section 39 of the Education Ordinance and the proposed role for the IMC chairperson, members have proposed to designate the chairperson of the IMC as the supervisor. The Administration has accepted the proposal and will move amendments to replace all references to "the chairperson of IMC" in the Bill with "the supervisor".

Appointment of the supervisor and the principal

36. Members have requested the Administration to consider incorporating provisions in the Bill to expressly empower SSBs to determine the appointment of the supervisor and the selection of the principal.

Appointment of the supervisor

37. The Administration has pointed out that proposed section 40AD(1)(g) provides that an SSB shall be responsible for drafting the IMC constitution. Proposed regulation 75A(2)(d) also sets out that the constitution shall provide for the appointment or election of manager to be or to act as the supervisor. In order to define more clearly the power of the SSB in appointing the supervisor, the Administration will propose an amendment to proposed section 40AI to set out clearly that the supervisor can be appointed directly by the SSB or elected among school managers.

Selection of the principal

38. Section 57A stipulates that the IMC shall establish a principal selection committee consisting of representatives of the SSB, the IMC and, where applicable, such other persons provided for in the IMC constitution before recommending any person to be the principal of a school. This will help to ensure that the selection process is fair, open and transparent. Proposed section 57A(4) provides that PSEM may, on an application and upon good causes shown to his satisfaction, exempt any IMC from the requirement. Such causes may include operational needs to deploy principals among sponsored schools in the case of class reduction.

39. Members have suggested that in the selection of the principal, provision should be made to empower the SSB to nominate a candidate to be the principal, subject to the endorsement of the IMC. The Administration has accepted the proposal and will propose an amendment to section 57A to specify that both the SSB and the IMC could nominate candidates to the principal selection committee. The candidates have to go through the proper selection process conducted by the committee. The IMC would then nominate the selected candidate to PSEM for approval. Exemption from the requirement of a principal selection committee is only allowed in the circumstances referred to

in paragraph 25 above or with approval from PSEM upon application from the IMC and with good reasons shown to PSEM's satisfaction.

Procedures for nomination and election of IMC managers

40. In response to questions asked by members regarding the procedures for nomination and election of IMC managers, the Administration has pointed out that proposed sections 40AK - 40AO already provide for the principles of election of teacher and parent managers and nomination of SSB and alumni managers. Under proposed regulation 75A, the IMC constitution has to provide, among other things, for the number of each category of managers, the procedures for nominating and electing them and their tenure of office. To help schools draft their IMC constitutions and elect their teacher and parent managers, EMB will issue a sample constitution and election guidelines to SSBs and schools for their reference. In addition, briefing sessions will be organised to familiarise stakeholders with the principles and related arrangements.

Grounds for refusal to register manager

"fit and proper person" requirement

41. The Bill proposes to add a new subsection (1A) to section 30 to introduce new grounds on which PSEM may or must refuse to register a person as a manager of a school. Members have asked the Administration to review whether it is reasonable to refuse to register an applicant as a manager on the ground that he is not "a fit and proper person" as stipulated in section 30(1)(b) when the applicant is an elected parent or alumni manager.

42. As requested by members, the Administration has reviewed existing legislation with reference to "a fit and proper person" and found that they can be generally grouped under the following five categories -

- (a) related to registration, approval or recognition;
- (b) related to permit or licence;
- (c) related to authorisation;
- (d) related to appointment; and
- (e) related to disciplinary action or serving notice.

Since section 30(1) deals with application for registration as a manager, the Administration considers that the use of such criterion is similar to other legislation.

43. Although the Administration has not found cases that such criterion applies to elected persons, the Administration is of the view that the electors may not have grasped all the information to determine whether an elected person is "fit and proper" by the time they vote. For instance, the electors may not know of the health conditions of the elected person or whether he has contravened any criminal law or committed professional misconduct. To safeguard the overall benefits of students, the Administration considers that it is necessary to retain the provision to ensure that there would be a proper person to exercise the power that the Government devolves to an IMC.

44. Some members consider that the "fit and proper" criterion reasonable as there may be some special circumstances which make a person unsuitable for appointment as a school manager. Some members suggest that it should be set out in the election guidelines to make it clear to the candidates from the beginning so that they can decide whether to stand for election. The Chairman holds the view that the provision is inappropriate and unnecessary in respect of an elected candidate. The Chairman has indicated that she proposes to move an amendment to specify that the provision will not be applicable to an elected parent manager and alternate parent manager nominated under proposed section 40AM and an elected alumni manager nominated under proposed section 40AN.

Upper and lower age limits

45. The Administration has accepted members' proposal to set the lower age limit of managers at 18 years and will add a new provision to that effect (new section 30(1A)(b)). Members have also asked the Administration to review whether it is reasonable to refuse to register an applicant as a manager on the ground that "the applicant has attained the age of 70 years" as stipulated in section 30(1)(d). The Administration has agreed to delete section 30(1)(d). A new section 30(1A)(c) will be added to make clear that an existing manager or a new applicant over 70 years of age must provide a medical certificate stating that the applicant is medically fit to carry out the duties of a manager.

Grounds for cancellation of registration of managers

Absence from IMC meetings

46. Some deputations have expressed the view that a manager who has been absent from three consecutive meetings of the IMC or does not attend all IMC meetings in a school year should be required to resign. Members have asked the Administration to review the grounds for cancellation of registration of managers under section 31 of the Education Ordinance.

47. The Administration believes that for effective school management, an IMC should hold not less than three meetings a year. Proposed section 31(1)(g)(i) provides that an IMC may request PSEM to cancel the registration

of a manager who has been absent without leave from three consecutive meetings of the IMC. To ensure that managers will carry out their duties effectively, the Administration will replace the reference of "three consecutive meetings" with "all meetings of the committee in a school year".

48. Members have also asked the Administration to clarify who will be responsible for granting leave for absence under the amended section 31(1)(g)(i) and consider how to facilitate fair and consistent enforcement. The Administration has explained that the authority responsible for granting of leave for managers can be spelt out in the IMC constitution. The authority can be the supervisor or the majority of IMC managers.

49. To better reflect the intention of proposed section 31(1)(g)(i), the Administration will amend the provision to specify that an IMC may request PSEM to cancel the registration of a manager who is absent without the consent of the IMC from all meetings of the IMC in a school year.

Power of PSEM

50. Members have also asked the Administration to review the power of PSEM to cancel the registration of a manager and consider whether additional restrictions should be imposed on the exercise of such power.

51. The Administration has pointed out that in exercising the power under section 31(1), PSEM must act reasonably and on justifiable grounds. The manager will be asked to make representation before his registration is cancelled. Moreover, the manager can lodge an appeal to the Appeal Board under section 61 against the decision of PSEM and further appeal can be made to the Chief Executive in Council. The same appeal mechanism applies to the new grounds for cancellation of registration of managers provided in the Bill. Since PSEM's decision is subject to appeal, the Administration does not consider it necessary to have additional restrictions. Some members have questioned whether appeal against the decision of the Appeal Board should be made to a court instead of the Chief Executive in Council.

Minimum qualifications of managers

52. Some deputations have suggested managers other than parent managers should have a minimum qualification of secondary education and at least one third of the managers in an IMC should hold a post-secondary qualification. The Administration has pointed out that setting different requirements for different categories of managers may be discriminatory and divisive, which might discourage enthusiastic and capable people from serving on IMCs.

53. While members do not consider it necessary to prescribe a minimum qualification for IMC managers, they agree in principle to the suggestion that one-third of the managers of an IMC should possess a post-secondary

qualification. To facilitate their further consideration of the suggestion, members have asked the Administration to provide information on the qualifications of existing managers in rural schools for their reference.

54. The Administration has informed members that at present, 39 or 48% of rural schools have one-third or more of their managers possessing a post-secondary qualification, and among all aided schools, the managers of 76% of them meet such qualification requirement. In view of the fact that managers of most schools have already attained a post-secondary qualification and the implementation of such a requirement may cause administrative difficulties, the Administration considers that there is no practical need to set a minimum education qualification requirement for managers.

Appointment of managers by PSEM

55. Clause 18 amends section 41 which provides for the appointment of managers by PSEM. Under the amended section 41, PSEM may appoint one or more persons to be managers of a school for such period as he thinks fit if it appears to him that -

- (a) a school is not being managed satisfactorily or that the education of the pupils is not being promoted in a proper manner;
- (b) in relation to a school the composition of the management committee or IMC is such that the school is not likely to be managed satisfactorily or the education of the pupils of the school is not likely to be promoted in a proper manner; or
- (c) for any reason a school has no manager.

56. Members consider that there is a need to specify that not more than two such managers should be appointed. Hon Emily LAU considers that the reasons in (a) and (b) above are too general and need to be more specific. Ms LAU has proposed amendments to replace the two reasons by stating clearly that the management of the school in question has a serious problem or crisis which causes confusion and renders the school unable to operate normally. Ms LAU's proposed amendments also limit the number of managers to be appointed by PSEM to not more than two. Similar amendments would be made to section 22 (Grounds for cancellation of registration or provisional registration of school), section 82 (Power of PSEM to direct remedial measures) and 83 (Power of PSEM to close school or give directions in case of danger or misconduct).

Teacher managers in a bi-sessional school

57. Members have asked the Administration whether the Bill should specify that the morning session and the afternoon session of a bi-sessional school

should each have not less than one teacher manager in an IMC to represent the views and interests of their teachers.

58. The Administration explains that the proposed IMC composition requirement in the Bill aims to strike a balance between representation from different stakeholders and a reasonable and manageable size of the IMC. Proposed section 40AD(1)(g) provides that the SSB shall be responsible for drafting the IMC constitution and proposed regulation 75A(2)(a) stipulates that the constitution shall provide for the number of each category of managers in the IMC. Therefore, the SSB is given the power or flexibility in determining, according to their own situation, the number of each category of managers in IMCs of their sponsored schools.

59. As there can be two recognised PTAs in a bi-sessional school, the Administration proposes that if this is the case, one parent manager be elected from the PTA of each of the two sessions. Since all the teachers in a bi-sessional school are employed by the same management committee, the teacher manager can be elected amongst the staff from both sessions in principle. The Administration therefore does not recommend the same arrangement for teacher managers in bi-sessional schools.

60. The Administration has further pointed out that if a teacher manager is made mandatory for each session of a bi-sessional school, some SSBs will have to appoint more SSB managers to maintain the 60% representation in the IMC. If two teacher managers are included in the IMC of a bi-sessional school, the SSB will have to appoint 10 instead of nine SSB managers to the IMC and the total number of managers in the IMC will increase from 15 to 17. This will increase the burden of SSBs, especially large SSBs, which may have difficulties in appointing sufficient number of SSB managers to sit on IMCs of their sponsored schools. Therefore, the Bill does not require each session of a bi-sessional school to elect a teacher manager to sit on the IMC so as to allow schools flexibility to decide, according to their own situation, the number of teacher managers in their IMCs.

Nomination and election of parent managers

61. Members have asked the Administration to explain the rationale for restricting the right to vote in the election of a parent manager to members of the recognised PTA who are parents of the current pupils of the school. Members have further asked the Administration to -

- (a) examine whether the exclusion of parents who for various reasons are not members of the recognised PTA from the nomination and election process of a parent manager is compatible with the relevant provisions of the Hong Kong Bill of Rights Ordinance; and

- (b) consider the provision of an election system which will allow every parent of a current pupil of a school to vote or to be nominated for the election of a parent manager as well as to vote for the cancellation of registration of a parent manager of the school.

62. The Administration has explained that one of the roles of parent manager is to form a link between school management and other parents. In general, PTAs have greater representation and are more easily organised. For this reason, the Administration proposes that parent manager(s) should be elected by members of the PTA. Nevertheless, having taken into consideration members' views, the Administration will propose an amendment to allow parents of all current pupils of a school to have the right to vote and be elected in the election of parent managers organised by the PTA. They will also have voting right when a parent manager is to be removed.

63. Members have asked the Administration to examine whether an alumnus who is also the parent of a current pupil of a school will be allowed to be nominated for election of both parent manager and alumni manager if both elections take place at the same time. The Administration will propose an amendment to specify that no manager shall serve in more than one capacity in an IMC.

Filling of vacancies to maintain full composition of an IMC

64. Proposed section 40AS(2) provides that an IMC shall, within one month from the date on which the failure to maintain full composition arises, ensure that a person qualified to fill the vacancy is nominated or elected for registration as a manager and forward to PSEM an application by the person for registration as a manager. Members consider the period too short and have suggested extending it to three months. The Administration has accepted the suggestion and will move an amendment to extend the period for filling the vacancy to three months.

Register of interests

65. Proposed section 40BF provides that the IMC of a school shall keep a register of all declaration and disclosure of pecuniary or other personal interest made under proposed sections 40BD and 40BE respectively and permit any inspector of schools to inspect the register at any reasonable time.

66. Members have asked the Administration to consider allowing public access to the register. Taking into consideration the views of members, the Administration will amend proposed section 40BF to permit the public to inspect the register kept under section 40BE at any reasonable time.

Constitutions of IMCs

IMC constitutions to be approved by PSEM

67. To ensure that the IMC constitution complies with the requirements of the Education Ordinance, the Bill provides that the draft IMC constitution and its subsequent amendments should be approved by PSEM. Members have asked the Administration to elaborate on the justifications for empowering PSEM to approve the draft IMC constitution and re-examine the need for PSEM to approve amendments to the IMC constitution passed by an IMC.

68. The Administration has pointed out that regulation 75 of the Education Regulations already provides that the constitution of the management committee and its subsequent alteration or amendment shall have the approval of PSEM. The Bill therefore does not accord PSEM with any new authority.

69. The Administration considers that along with the devolution of responsibilities to schools, there should be checks and balance to ensure proper school management and use of public funds. The Bill only gives broad directions for the IMC constitution. SSBs need to set out the arrangements for the operation of the IMC in the draft IMC constitution. The Administration believes that allowing PSEM to approve the IMC constitution will not only ensure compliance with legislative requirements, but also avoid any missing provisions, which may lead to problems in decision-making or operation. The Administration is therefore of the view that it is necessary for PSEM to approve the draft constitution and its amendments to ensure that the IMC will operate smoothly and manage the school properly by following its constitution.

70. Moreover, the Administration has pointed out that other countries like Australia, New Zealand, USA and UK also require the school management bodies to submit their constitutions and subsequent amendments to the education authority for approval or scrutiny.

71. In response to members' comments on the need to set out more clearly the procedures for amendments to IMC constitutions, the Administration will amend proposed section 40AW to provide that -

- (a) an IMC may by resolution amend its constitution in the manner provided for in its constitution;
- (b) such an amendment shall be lodged with PSEM and shall not take effect before the expiry of one month after it is lodged; and
- (c) PSEM may by notice in writing to the IMC concerned, object to an amendment lodged with him before the amendment takes effect. The reason for the objection shall be specified in the notice.

72. Some members are concerned about the criteria for approval of an IMC constitution by PSEM. The Administration has informed members that the PSEM will approve an IMC constitution according to the following criteria -

- (a) there is no contravention of the Education Ordinance or other laws of Hong Kong;
- (b) it will enable the school to operate smoothly; and
- (c) it has provided for the issues set out in proposed regulation 75A, including -
 - (i) the number of each category of managers in the composition of the IMC;
 - (ii) the procedures for nominating or electing persons for registration as managers;
 - (iii) the procedures for making a request to PSEM under section 40AV of the Ordinance for the cancellation of the registration of any manager;
 - (iv) the appointment or election of a manager to be or to act as the supervisor, the secretary and the treasurer;
 - (v) the duties of the supervisor, the secretary and the treasurer;
 - (vi) the tenure of office of a manager;
 - (vii) the procedures for appointment of members of the principal selection committee;
 - (viii) filling the vacancy in the office of a manager;
 - (ix) matters relating to re-nomination or re-election of a manager;
 - (x) the appointment of an auditor;
 - (xi) meetings and proceedings of the IMC; and
 - (xii) the procedures for amending the constitution.

73. In response to members' request, the Administration has undertaken to provide a sample draft constitution for members' reference when it is ready.

SSBs' autonomy in drafting and revising IMC constitutions

74. In response to concern expressed by some deputations, the Administration has clarified that SSBs have full autonomy in this regard as proposed regulation 75A(2)(1) provides that the SSB may provide in the IMC constitution the procedures for amending the constitution.

Legal support services for schools

75. Members are concerned whether legal services will be provided to schools to help them draw up the IMC constitution and establish IMCs. The Administration has informed members that after the enactment of the Bill, it will invite legal professionals to provide schools with voluntary web-based services to help them set up their IMCs. These services include the provision of a sample IMC constitution and solutions to common problems encountered for reference of schools and SSBs. At the same time, the Administration will encourage SSBs to invite legal professionals who have a keen interest in education to join IMCs. The Administration will also explore the provision of other voluntary legal services, such as forming a legal professional support network to provide professional advice to schools through the Internet.

Appointment and dismissal of teaching staff

76. Regulation 76 of the Education Regulations stipulates that the appointment and dismissal of any member of the teaching staff of any school should be determined by a majority vote of all the members of the management committee of that school. The Director of Audit in his Report No. 39 noted that some schools did not follow this regulation. The Public Accounts Committee (PAC) was of the view that it would be relevant to study the procedures, particularly whether delegation or ratification was allowed under an IMC constitution. The Administration should explain how the Bill addresses the concern of PAC on the issue and how the Administration would enforce the requirement after the enactment of the Bill.

77. The Administration has informed the Bills Committee that EMB will continue to require schools to follow this regulation. The Administration will amend regulation 76 to provide that -

- (a) the appointment of any teacher to occupy a teacher post in the establishment of staff provided for in the codes of aid for primary, secondary or special schools or for a term of not less than six months shall be approved by the majority of managers of the school; and
- (b) the dismissal of any such teacher shall be approved by the majority of the managers of the school at a meeting of the management committee or IMC (as may be appropriate).

Offences and penalties

78. Members have also asked the Administration to -

- (a) clarify the burden and standard of proof in proceedings against a manager of an IMC school under section 18A, section 87, and regulation 101; and
- (b) explain why the liability of an IMC manager is different from that of a director in the management of a company under section 101E of the Criminal Procedure Ordinance (Cap. 221), i.e. the prosecution should prove beyond reasonable doubt that the offence is committed with the director's consent or connivance.

79. The Administration has pointed out that there are quite a number of provisions that impose criminal liability on the ground of "consent or connivance", the most notable one being section 101E of the Criminal Procedure Ordinance. The expression of "consent or connivance" covers two situations - (i) where a person has actual knowledge of the doing of the act; and (ii) where a person shuts his eye to an obvious means of knowledge and thus deliberately refrains from making enquiries the result of which he might not care to have. (*Mohan Gulabrai Mirchandani & ors v. R* [1977] HKLR 523)

80. To address members' concern, the Administration will amend proposed sections 18A(4), 87(10) and regulation 101(9) so that a manager can only be charged with the relevant offence if the contravention in question has been committed by the IMC with the consent and connivance of the manager.

81. Hon CHEUNG Man-kwong has pointed out that unlike SSBs and supervisors, IMC managers are elected or appointed to participate in SBM on a voluntary basis and are unlikely to be familiar with the civil and criminal liabilities which may arise from the execution of IMC functions. Mr CHEUNG considers it inappropriate to impose criminal penalties against a manager of an IMC or non-IMC school for failure to carry out certain administrative functions within a specified time limit under the Bill or the Education Ordinance. Mr CHEUNG has suggested that the Administration should review whether non-compliance with those sections relating to administrative functions should be criminal offences. The Chairman shares the view of Mr CHEUNG and has requested the Administration to review the offences and penalties under section 87 and regulation 101 to determine if they continue to be applicable to IMC and non-IMC schools. Members have also made various suggestions to repeal or amend certain existing regulations.

82. On review, the Administration has accepted most of the suggestions made by members. The Administration has proposed amendments to section 87 and regulation 101, as well as the relevant regulations under the Education Regulations.

83. Regulation 92(8) of the Education Regulations provides that PSEM may give a direction in writing to the supervisor and to the principal of a school that a syllabus of instruction or any other document specified in the direction shall not be used for instruction in any class in the school or in such class in the school as may be specified in the direction. Clause 47 amends regulation 92(8) by repealing "the supervisor and to".

84. Some members have questioned the need for retaining the provision and have asked the Administration to consider repealing it. The Administration has explained that there is no restriction on the syllabus of instruction unless a direction to the contrary is issued. As the Administration does not agree to repeal the provision, the Chairman has proposed to add a new regulation 92(8A) to set out clearly the criteria to be used by PSEM in giving the direction.

Liability and insurance

Protection against legal liabilities for IMC managers

85. Some deputations consider that managers should be offered greater protection to ensure immunity from litigation. The Administration has pointed out that proposed section 40BG sets out that a manager shall not incur any civil liability in respect of anything done or omitted to be done in the performance of his functions as a manager if he acts in good faith. Hence, the Bill already provides much enhanced protection for individual managers as compared to the existing arrangement.

86. The Administration has also explained that it is not appropriate to grant immunity from legal suit to IMC managers. As a matter of policy, managers should not be exempted from liabilities in respect of acts done otherwise than in good faith. Whether an act is done in good faith must be determined by the court. Because of the exemption provided for in proposed section 40BG, a manager who acts in good faith is unlikely to be sued.

Liability of managers

87. Members have asked the Administration to explain how the test of "acting in good faith" can be satisfied when a manager is not present at a meeting, or is only notified of an act at a subsequent meeting.

88. The Administration explains that in general terms, a person acts in good faith if he acts honestly and without ulterior motive. As IMCs are separate legal entities, they incur civil liabilities in their own names in respect of their own acts. Therefore, individual managers would not be held liable for the acts of the IMC. The protection from civil liability accorded by section 40BG is in fact an extra "shield" for individual managers in case they are personally involved in the act. As regards the scenarios referred to in paragraph 87 above, the manager concerned has not acted in relation to the act and would not

be exposed to civil liability in respect of the act.

89. Members have asked whether the Administration would consider indemnifying a manager against any liability incurred by him in defence proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted along the lines of section 165 of the Companies Ordinance.

90. The Administration has explained that the objective of section 165 of the Companies Ordinance is to protect shareholders. The section renders illegal any provision in the articles of a company (or in a contract with it) which exempts an officer or the auditor of the company from certain legal liabilities (relating to negligence, default, breach of duty or breach of trust) or indemnifies such persons against such liabilities. An example of such provision is one which stipulates that the company cannot sue its directors for negligence in performance of duties. Section 165(c) provides for an exception to the above prohibition.

91. There is no similar restriction under the Bill in relation to waiving claims against a manager in respect of the above-mentioned legal liabilities. The constitution of an IMC can therefore prohibit the IMC from suing the managers for breach of duty, etc. Proposed section 40BG offers protection to managers for acts done in good faith. They cannot be sued if they have acted without fraud or malice. If a manager acts in bad faith (e.g. stealing money belonging to the IMC), he probably commits a criminal offence. The Administration considers that the prospect of being prosecuted and sentenced should be able to discourage managers from stepping across the line. It is not the Administration's policy to have the prohibition provided for in section 165 of the Companies Ordinance. Therefore, the Administration does not consider it necessary to provide for the excepted indemnity mentioned in paragraph 90 above.

Block Insurance Policy (BIP) and additional insurance coverage

92. Some deputations have expressed the view that the Government should arrange insurance cover to protect schools and school managers from liability claims. Noting that the Government has arranged for aided schools a BIP to cover public liability, employees' compensation and group personal accident risks, members have asked the Administration to clarify whether IMC managers in their discharge of IMC duties are covered by the BIP for aided schools.

93. The Administration has confirmed that activities organised by the school or activities organised by a PTA or an alumni association which are approved by the SMC will be covered by the BIP. Members of the SMC, employees of the school, voluntary helpers and students taking part in school activities would be covered by the Public Liability insurance.

94. Members note that Public Liability covers the liabilities in respect of accidental injury to any person, and/or accidental loss of or damage to any property. Employees' Compensation covers the liability in respect of death or injury by an accident or a disease arising out of and in the course of employment either under the Employees' Compensation Ordinance or otherwise at law. Group Personal Accident covers the liability in respect of accidental death and disablement of students taking part in school activities. The BIP will also cover the cost of defence and legal representation.

95. The Administration has pointed out that new additional items are included in the Public Liability under the BIP. These new items cover the legal liability and third party claims in respect of impairment of any person's mental condition caused by anguish, shock or trauma and impairment of a student's mental condition arising from counselling activities conducted by professional counsellors.

96. Thus the current BIP already offers quite a comprehensive protection to the management committees and school managers. However, there are possibilities that school managers might still be subject to the exposure of the following liabilities, which are not covered by the BIP -

- (a) Professional indemnity such as failure to act for the best interest of the school, wrong education instruction and breach of duty of care by the professional staff employed by the school;
- (b) Employment practices liability such as sexual harassment, wrongful termination of employment contract, and discrimination; and
- (c) Directors & Officers liability such as employment-related claims and third party discrimination / harassment claims, infringement of copyright, unintentional breach of confidentiality, libel and slander.

97. Depending on the situation and their own needs, individual IMCs may arrange additional insurance cover to provide better protection to their managers or teaching staff in discharging their duties. The premium for the above insurance cover could be paid from the school's General Funds/Subscriptions Account.

98. In response to members' request, the Administration will propose an amendment to spell out clearly in the Bill that any claim for compensation shall be enforced against an IMC to the exclusion of individual school managers.

99. Members have also asked the Administration to examine whether professional indemnity and Directors and Officers liability should be included

under the BIP to further protect IMC managers against legal liabilities and to consult SSBs on the matter. The Administration has informed members that it is now conducting a preliminary study into the matter.

Commencement of the Amendment Ordinance

100. Clause 1(2) provides that the Amendment Ordinance shall come into operation on a date to be specified by the Secretary for Education and Manpower by notice published in the Gazette. The Administration originally proposed that the Amendment Ordinance should commence on 1 December 2004. In response to members' suggestion, the Administration has agreed to specify clearly in clause 1(2) that the Amendment Ordinance would commence on 1 January 2005.

Transition period

101. Proposed section 40BJ provides that the sponsoring body of an operating school which is an aided school shall make a submission of a draft constitution for the purpose of the establishment of an IMC. In the case of an aided school, the submission shall be made by 1 January 2009, i.e., within four years from the commencement date.

102. Hon CHEUNG Man-kwong considers that the Administration should review the implementation of the Bill three years after its commencement. During his attendance at one of the meetings of the Bills Committee, the Secretary for Education and Manpower has pointed out that as the Administration will review the provisions of the Bill from time to time during the transition period, there is no need to wait three years before carrying the review. If problems are found in implementation, the Government will propose amendments to improve the relevant provisions and extend the transition period if necessary.

103. Hon CHEUNG Man-kwong has proposed to add a new subsection (5) to section 40BJ to enable the Legislative Council, by way of a resolution at any time after 1 January 2008, to extend the date for SSBs of aided schools to submit draft constitutions. Mr CHEUNG has requested the Administration to consider moving the amendment which will help address the concern of some SSBs. The Administration has expressed concern that the proposal might encourage some SSBs to adopt a wait-and-see attitude.

104. The Chairman has also proposed amendments to section 40BJ to delete the date of 1 January 2009 and to provide instead that the Secretary for Education and Manpower may, by notice published in the Gazette, specify the date before which a submission of a draft constitution for the establishment of an IMC of an aided school shall be made. Such a notice shall be subsidiary legislation subject to the approval of the Legislative Council.

105. Members have asked whether those schools which have established an IMC can opt out when they encounter implementation problems during the transition period. The Administration has pointed out that in principle, a responsible SSB should have careful consideration before deciding to establish an IMC and to put into practice the spirit of SBM. The participatory governance introduced in the Bill defines clearly the powers and responsibilities of an IMC and provides protection for managers against civil liability. SSBs should not easily opt out from this governance structure. If schools encounter problems in implementation, the Administration will try its best to assist them to solve their problems.

Failure to establish IMC

106. Proposed section 40BR(d) provides that the Government may terminate the sponsoring agreement of an aided school if an IMC is not established as required.

107. Members have expressed grave concern about how the Government will implement the section if a large number of schools fail to establish an IMC. They have therefore urged the Administration to consider the impact and consequence of such drastic action and to review the provision.

108. On review, the Administration has agreed to delete the paragraph. The amended section 40BR provides that PSEM may appoint one or more persons to be the manager of a school which fails to establish an IMC and cancel the registration of any manager.

109. Some members have expressed concern that the provision in effect allows the Government to take over the operation of the school until an IMC is established. The Administration has explained that the Government will persuade schools to establish an IMC and will not take action under section 40BR unless persuasion and all other efforts fail to achieve the objective. The Chairman has indicated that she is considering an amendment to delete proposed section 40BR. She notes that PSEM may exercise other powers under existing sections 82, 83 and 22.

DSS schools

110. Hon CHEUNG Man-kwong and Hon Emily LAU have questioned why DSS schools are allowed a choice whether or not to establish an IMC and even after they have set up an IMC, may still opt to revert to DSS schools without an IMC. They have asked the Administration to clarify whether the policy intent is to encourage SSBs which do not wish to establish an IMC to join DSS.

111. The Administration has explained that subsidies are provided to DSS schools by the Government depending on the number of students the school

can recruit. Parents' voices are therefore influential. As DSS is a relatively new initiative, the Administration suggests giving more flexibility to DSS schools, allowing them to choose, according to their own situation, whether or not to establish an IMC under the Education Ordinance. On review, the Administration has decided that DSS schools which have set up an IMC may not opt to revert to DSS schools without an IMC.

112. As regards whether the policy intent is to encourage SSBs which do not wish to establish an IMC to join DSS, the Administration has explained that the Government's policy is to foster the development of a strong DSS sector to inject more variety into the school system, and to provide more choices to parents. Schools may choose to join DSS, having regard to their own needs. The Government would not encourage schools to join DSS just because they do not wish to establish an IMC.

Schools in receipt of Government subsidies

113. Proposed section 40AB provides for the definition of "operating school" to mean an aided school, a DDS school or a non-aided school in receipt of Government subsidies. The Administration has proposed to delete the definition of "operating school" and to add a new definition of "specified school" to list out in a new Schedule 3 the non-aided schools in receipt of Government subsidies which could apply to establish an IMC after the commencement of the Bill. A new section 40ABA is proposed setting out the criteria for a school to be specified in Schedule 3 and empowering the Secretary for Education and Manpower to amend Schedule 3 by notice published in the Gazette.

Operation and management of Government schools

114. Some members have asked the Administration to explain the reasons for exempting Government schools from the Education Ordinance and to highlight the areas of operation of Government schools which are consistent or not consistent with the requirements of the Bill and provide justifications for any inconsistencies.

115. The Administration has pointed out that Government schools are part of the Government and operate in accordance with the existing regulations of the Government and relevant ordinances. As such, Government schools are exempted from registration under the Education Ordinance. Nevertheless, Government schools will manage their operation with reference to the provisions of the Education Ordinance.

116. As regards the operation and management of Government schools, they are consistent with the proposals of the Bill in many areas. All Government schools have established their own SMC comprising the principal, parents, teachers, alumni, independent community members and a directorate grade

officer of EMB (similar to the SSB's representative) serving as the SMC Chairperson to manage the school and formulate school development plans. The teacher, parent and alumni representatives are elected and all SMC members are appointed by PSEM.

117. However, certain areas of the operation and management of Government schools are part of the Government and are not consistent with the proposals of the Bill. Since Government schools are exempted from registration under the Education Ordinance, the SMC of a Government school is not required to establish an IMC in accordance with the Bill. As the Government is the employer of the staff of Government schools, the appointment of staff in Government schools has to comply with the procedures for the appointment of civil servants. The appointments of principals of Government schools follow existing Government regulations and it is not necessary for a Government school to establish its own selection committee to select the principal.

Views of SSBs and PTAs

118. During the course of scrutiny of the Bill, the Bills Committee has received over 50 submissions from SSBs and PTAs. Some of them have also placed advertisements in newspapers to publicise their views on the Bill.

119. The Hong Kong Association of Sponsoring Bodies of schools and the largest SSBs have expressed strong opposition to the Bill. They are gravely concerned that under the new system, the IMC will replace the SSB and be directly responsible to the Government. They are also worried that the larger SSBs with their existing support structure will lose their function and the vision and mission of their schools will be eroded. These organisations consider that given the diversity and tradition and mode of governance in schools, more than one model should be allowed. They have suggested that a multi-tiered model such as that proposed in the Education Report No. 7 should be adopted.

120. On the other hand there are also SSBs and PTAs which have expressed strong support for the Bill. Some PTAs have pointed out that schools which have involved teachers and parents in their management committees have worked well and are of the view that those SSBs opposed to the Bill are over-worried.

Review of the Education Ordinance and Education Regulations

121. Members have pointed out that some of the requirements in the Education Ordinance and Education Regulations are outdated and should be reviewed. The Chairman is of the view that a comprehensive review of the Education Ordinance and the Education Regulations should be carried out in the next legislative term.

Article 141 of the Basic Law

122. Hon CHEUNG Man-kwong has pointed out that one of the largest SSBs plans to initiate litigation against the Government for contravention of Article 141 of the Basic Law if the Bill is enacted. Paragraph 3 of Article 141 provides that religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services. Members have asked the Administration to seek legal advice on the subject and provide a written response to Members before the Second Reading debate on the Bill is resumed. The Administration has agreed to provide a paper to Members as requested.

Committee Stage amendments

123. The Committee Stage amendments to be moved by the Administration are in **Appendix III**.

124. The Committee Stage amendments proposed by members are in **Appendix IV**.

Recommendation

125. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 7 July 2004.

Follow-up action by the Administration

126. The Bills Committee has requested the Administration to review the Education Ordinance and the relevant subsidiary legislation in the next legislative term (paragraph 121 above refers).

Advice Sought

127. Members are invited to note the recommendation of the Bills Committee in paragraph 125 above. A verbal report was made by the Chairman of the Bills Committee at the meeting of the House Committee on 18 June 2004.

Bills Committee on Education (Amendment) Bill 2002

Membership List

Chairman	Hon Cyd HO Sau-lan
Members	Ir Dr Hon Raymond HO Chung-tai, JP Hon LEE Cheuk-yan Hon CHEUNG Man-kwong Hon LEUNG Yiu-chung Dr Hon YEUNG Sum (up to 12.3.2003) Hon YEUNG Yiu-chung, BBS Hon Emily LAU Wai-hing, JP Hon SZETO Wah Hon Tommy CHEUNG Yu-yan, JP Hon Audrey EU Yuet-mee, SC, JP (Total : 10 Members)
Clerk	Ms Doris CHAN
Legal Adviser	Ms Bernice WONG Sze-man
Date	31 October 2003

《 2002年教育(修訂)條例草案 》委員會
Bills Committee on Education (Amendment) Bill 2002

曾向委員會表達意見的團體／個別人士名單
List of organisations/individuals who have
submitted views to the Bills Committee

團體名稱

Name of organisation

I. 辦學團體

I. School Sponsoring Bodies

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| * 1. 香港辦學團體協會 | Hong Kong Association of Sponsoring Bodies of Schools |
| * 2. 天主教香港教區 | The Catholic Diocese of Hong Kong |
| * 3. 香港聖公會 | Hong Kong Sheng Kung Hui |
| * 4. 中華基督教會香港區 | Hong Kong Council of the Church of Christ in China |
| * 5. 仁濟醫院 | Yan Chai Hospital |
| * 6. 香港佛教聯合會 | The Hong Kong Buddhist Association |
| * 7. 香港私立學校聯合會 | Hong Kong Private Schools Association |
| * 8. 香港基督教協進會 | Hong Kong Christian Council |
| * 9. 香港道教聯合會 | Hong Kong Taoist Association |
| * 10. 聖母痛苦方濟傳教女修會 | Franciscan Missionary Sisters of Our Lady of Sorrows |
| * 11. 鮑斯高慈幼會 | Society of St Francis de Sales |
| * 12. 麗澤中學 | Lai Chack Middle School |
| * 13. 寶血女修會 | Sisters of the Precious Blood |
| 14. 香港紅十字會 | Hong Kong Red Cross |
| 15. 母佑會 | Daughters of Mary Help of Christians |

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| 16. 基督教香港信義會 | Evangelical Lutheran Church of Hong Kong |
| 17. 循道衛理聯合教會 | Methodist Church, Hong Kong |
| 18. 瑪利亞方濟各傳教修會 | Franciscan Missionaries of Mary |
| 19. 威靈頓教育機構 | Wellington Education Organization |
| 20. 元朗商會教育促進有限公司 | Yuen Long Merchants Education Promotion Limited |
| 21. 興學證基協會 | Schools for Christ Foundation |

II. 家長教師會

II. Parent-teacher Associations

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| * 22. 家庭與學校合作事宜委員會 | Committee on Home-School Co-operation |
| * 23. 九龍城區家長教師會聯會 | Federation of Parent-Teacher Association, Kowloon City District |
| * 24. 大埔區家長教師會聯會 | Federation of Parent-Teacher Associations, Tai Po District |
| * 25. 中華基督教會基元中學家長教師會 | CCC Kei Yuen College Parent Teacher Association |
| * 26. 元朗天主教中學家長教師會 | Yuen Long Catholic Secondary School Parent-Teacher Association |
| * 27. 屯門區家長教師會聯會 | Federation of Parent-Teacher Association of Tuen Mun |
| * 28. 北區家長教師會聯會 | Federation of Parent-Teacher Association of the Northern District |
| * 29. 沙田區家長教師會聯會 | The Joint Counsel of Parent-Teacher Associations of the Shatin District |
| * 30. 長沙灣天主教英文中學家長教師會 | Cheung Sha Wan Catholic Secondary School Parents Teachers Association Club |
| * 31. 迦密聖道中學家長教師會 | Parent-Teacher Association of Carmel Holy Word Secondary School |
| * 32. 香港東區家長教師會聯會 | Hong Kong East Parent Teacher Association Federation |

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| * 33. 柴灣天主教海星小學家長教師會 | Chai Wan Star of the Sea Catholic Primary School Parents and Teachers Association |
| * 34. 荃灣區家長教師會聯會 | Tsuen Wan District Parent-Teacher Association Federation |
| * 35. 將軍澳家長協會 | Tseung Kwan O Parents Association |
| * 36. 黃大仙區家長教師會聯會 | Federation of Parent-Teacher Association Wong Tai Sin District |
| * 37. 聖公會田灣始南小學家長教師會 | SKH Tin Wan Chi Nam Primary School Parent-Teacher Association |
| * 38. 葵青區家長教師會聯會 | Joint Parent-Teacher Association of Kwai Tsing District |
| * 39. 觀塘區家長教師會聯會 | Federation of Parent Teacher Associations in Kwun Tong District |
| 40. 十四區家長教師會聯會及協會 | 14 Federations of Parent-Teacher Associations |
| 41. 天主教郭得勝中學家長教師會 | Kwok Tak Seng Catholic Secondary School Parent Teacher Association |
| 42. 明愛樂義學校家長教職會 | Caritas Lok Yi School Parent-Staff Association |
| 43. 香港中文大學校友會聯會張煊昌中學家長教師會 | CUHK FAA Thomas Cheung Secondary School Parent-Teacher Association |

III. 教育機構/關注團體

III. Educational institution/concern organization

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| * 44. 香港教育專業人員協會 | Hong Kong Professional Teachers' Union |
| * 45. 香港教育工作者聯會 | Hong Kong Federation of Education Workers |
| * 46. 津貼小學議會 | Subsidized Primary Schools Council |
| * 47. 香港中文中學聯會 | The Association of Hong Kong Chinese Middle Schools |
| * 48. 香港中學校長會 | Hong Kong Association of Heads of Secondary Schools |

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| * 49. 香港津貼中學議會 | Hong Kong Subsidized Secondary Schools Council |
| * 50. 香港學校書記及校工總工會 | Hong Kong School Clerks and Janitors General Union |
| 51. 教育評議會 | Education Convergence |
| 52. 順德聯誼總會 | Shun Tak Fraternal Association |
| 53. 香港天主教正義和平委員會 | Justice & Peace Commission of the Hong Kong Catholic Diocese |
| 54. 香港基督教服務處 | Hong Kong Christian Service |
| 55. 香港青年大專學生協會 | Hong Kong Youth & Tertiary Students Association |
| 56. 香港家長協會 | Hong Kong Parents Association |

個別人士

Individual

- | | |
|----------------------------|---|
| * 1. 彭耀佳先生
前校本管理諮詢委員會主席 | Mr PANG Yiu Kai
Chairman of the former Advisory Committee on School-based Management |
| * 2. 狄志遠先生
前校本管理諮詢委員會委員 | Mr TIK Chi-yuen
Member of the former Advisory Committee on School-based Management |
| * 3. 黃克廉先生
前校本管理諮詢委員會委員 | Mr WONG Hak-lim
Member of the former Advisory Committee on School-based Management |
| * 4. 李思泌博士, JP
黃大仙區議會議員 | Dr Albert LI Sze-bay, JP
Member of Wong Tai Sin District Council |
| * 5. 黎樹濠校長
基督教聖約教會堅樂中學 | Mr Patrick LAI Shu-ho
Principal, The Mission Covenant Church
Holm Glad College |
| 6. 陳日君主教 | Bishop Joseph ZEN |

7. 彭孝廉博士及一羣為數 60 人的校監、校董、校長及教師 Dr PANG Hau-lim and a group of sixty school supervisors, managers, principals and teachers
8. 梁貫成博士 Dr Frederick LEUNG
9. Mr YIM King-long
10. 一位不具名的教師 an anonymous teacher
11. 葉美齡女士
12. Mr Stephen SHUM

* 曾向小組委員會口頭申述意見的團體/個別人士
Organisations/individuals who have made oral representations to the Bills Committee

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EDUCATION (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting "Director of Education's" and substituting "Permanent Secretary for Education and Manpower's".
1(2)	By deleting everything after "on" and substituting "1 January 2005.".
2(b)	(a) In subparagraph (ii), in the proposed definition of "manager", in paragraph (b), by deleting "40AH" and substituting "40AJA".

(b) In subparagraph (iv), in the proposed definition of "sponsoring body", by deleting "Director" and substituting "Permanent Secretary".

(c) By adding -

"(iva) in the definition of "supervisor", by repealing everything after "means" and substituting -
"-

(a) in relation to a school without IMC, a manager who is -

(i) approved as the supervisor of the school under section 34 or 38(2) or under either of the repealed Ordinances; or

(ii) approved as the acting supervisor of the school under section 38A(2);

(b) in relation to an IMC school, a manager who is -

(i) appointed or elected under

section 40AI(2) as
the supervisor of
the school; or

(ii) appointed or
elected under
section 40AI(2A) as
the acting
supervisor of the
school." ;"

(d) In subparagraph (v), by deleting the
proposed definition of "DSS school".

(e) In subparagraph (v), by deleting the
proposed definition of "non-aided school in
receipt of Government subsidies".

2(c) In the proposed section 3(2), by deleting
"Director" and substituting "Permanent
Secretary".

3 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

3(a) In subparagraph (ii), in the proposed section
8(1)(da)(ii), by deleting "40AH(2)" and
substituting "40AJA(2)".

3(b) In the proposed section 8(3), by deleting
"register maintained under subsection (1)(da)

shall be made available in such manner as the Director" and substituting "entries referred to in subsection (1) (da) (i) and (ii) shall be made available in such manner as the Permanent Secretary".

4

By deleting everything after "Section" and substituting -

"9 is amended -

(a) by adding before subsection (1) -

"(1A) In this section,

"interested persons" means, in relation to a school -

- (a) the owners of the school;
- (b) the managers of the school;
- (c) the teachers of the school;
- (d) persons who are not owners, managers or teachers of the school but manage or take part in the management of the school; or
- (e) the students of the school."

- (b) in subsection (1), by repealing "owners, managers, teachers and pupils" and substituting "interested persons";
- (c) in subsection (1)(a), by repealing everything after "the Government" and substituting a semicolon;
- (d) in subsections (2), (3)(b) and (5)(c), by repealing "owners, managers, teachers or pupils" and substituting "interested persons".

7

- (a) In the heading, by deleting "**Director**" and substituting "**Permanent Secretary**".
- (b) By adding -
 - "(aa) in subsection (2), by repealing "A supervisor" and substituting "The supervisor of a school without IMC";".

7(b)

- (a) In the proposed section 18A(3), by deleting everything after "subsection (1)" and substituting "with the consent or connivance of a manager of the school, the manager shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months."

(b) By deleting the proposed section 18A(4).

11 By deleting the clause.

12(a) By deleting subparagraph (i) and substituting -
“(i) by repealing paragraph (d);”.

12(b) (a) In the proposed section 30(1A), by deleting
“Director may” and substituting “Permanent
Secretary may”.

(b) In the proposed section 30(1A), by deleting
paragraphs (a) and (b) and substituting -

“(a) a school if the applicant -

(i) is a bankrupt within the
meaning of the
Bankruptcy Ordinance
(Cap. 6) or has entered
into a voluntary
arrangement under that
Ordinance; or

(ii) has previously been
convicted in Hong Kong
or elsewhere of a
criminal offence
punishable with
imprisonment;

(b) a school if the applicant is under
the age of 18 years;

(c) a school if -

(i) the applicant has attained the age of 70 years and he fails to produce a medical certificate issued by a registered medical practitioner within 2 months before the date of his application certifying that the applicant is physically fit to perform the functions of a manager;
or

(ii) the applicant is under the age of 70 years and he fails to produce, upon a request by the Permanent Secretary, a medical certificate issued by a registered medical practitioner after the date of such request certifying that the applicant is physically fit to perform the functions of

a manager; or

- (d) an IMC school or a school in respect of which a submission has been made under section 40BJ or 40BU if the applicant has been registered as a manager of 5 or more schools."

- 12(c)
 - (a) In the proposed section 30(2)(a), by deleting "if it appears to the Director" and substituting "without IMC if it appears to the Permanent Secretary".
 - (b) In the proposed section 30(2)(b)(i), by deleting "Director" and substituting "Permanent Secretary".
 - (c) In the proposed section 30(2)(b)(ii), by adding "subject to any exemption granted under section 40AP," before "the registration".

- 13(a)(iv)
 - (a) In the proposed section 31(1)(g), by deleting "Director" and substituting "Permanent Secretary".
 - (b) In the proposed section 31(1)(g)(i), by deleting everything after "without" and substituting "the consent of the committee

from all meetings of the committee in a school year; and”.

- (c) By deleting the proposed section 31(1)(h) and (i).
- (d) In the proposed section 31(1)(j) -
 - (i) by deleting “Director” and substituting “Permanent Secretary”;
 - (ii) by adding “physically” before “fit”.
- (e) In the proposed section 31(1)(k), by deleting “署” and substituting “常任秘書”.

13 (b)

- (a) By deleting subparagraph (i) and substituting -
 - “(i) by repealing paragraph (a);”.
- (b) In subparagraph (ii), in the proposed paragraph (aa), by deleting everything after “receives a” and substituting “notice under section 39(2)(a) or 40AJ(1)(b)(i) in respect of the manager.”.
- (c) In subparagraph (ii), in the proposed paragraph (ab), by deleting “署” and substituting “常任秘書”.

13

By adding -

“(c) by adding -

“(2A) The Permanent Secretary shall cancel the registration of a manager of

a school without IMC if it appears to him that the manager is no longer acceptable as a manager of the school to the majority of the managers of the school."."

17

- (a) By deleting the part heading of the proposed Part IIIB and substituting -

"PART IIIB

MANAGEMENT OF IMC SCHOOLS".

- (aa) By deleting the proposed section 40AA and substituting -

"40AA. Application of certain provisions of this Part

Sections 40AC to 40BG apply to IMC schools only."

- (ab) In the proposed section 40AB, in the definition of "alternate manager", by adding ", alternate sponsoring body manager" before "or".

- (ac) In the proposed section 40AB, by adding -

"alternate sponsoring body manager" (替

代辦學團體校董) means a manager who is nominated for registration as such under section 40AK;"

- (ad) In the proposed section 40AB, by deleting the definition of "chairperson".

- (ae) In the proposed section 40AB, by deleting

the definition of "commencement date".

(af) In the proposed section 40AB, by deleting the definition of "operating school".

(ag) In the proposed section 40AB, in the definition of "parent", by deleting everything after "pupil," and substituting -
"includes -

(a) a guardian of the pupil; and

(b) a person who is not the parent or guardian of the pupil but has the actual custody of the pupil;" .

(ah) In the proposed section 40AB, by deleting the definition of "planned school".

(ai) In the proposed section 40AB, in the definition of "scheduled opening date", by deleting "Director" and substituting "Permanent Secretary".

(aj) In the proposed section 40AB, in the definition of "specialist staff", in paragraph (b), by deleting "Director" and substituting "Permanent Secretary".

(ak) In the proposed section 40AB, by adding -
"specified school" (指明學校) means a school specified in Schedule 3;" .

(al) In the proposed section 40AB, in the definition of "sponsoring body manager", by deleting "by the sponsoring body".

(b) In the proposed section 40AB, in the definition of "teacher", by deleting everything after "means" and substituting -

"a permitted teacher or registered teacher employed in a school -

(a) to occupy a teacher post in the establishment of staff provided for in the code of aid for primary schools, code of aid for secondary schools or code of aid for special schools; or

(b) for a term for not less than 12 months to perform teaching duties or other duties directly related to teaching;" .

(c) By adding -

"40ABA. Secretary may amend Schedule 3

(1) The Secretary for Education and Manpower may by notice published in the Gazette amend Schedule 3.

(2) A school shall not be specified in Schedule 3 unless -

(a) the school is a primary school or secondary school;

- (b) the school is neither an aided school nor a DSS school;
- (c) the school is a school without IMC;
- (d) the school is not operated for the purpose of making profit;
- (e) the sponsoring body of the school is not a profit-making organization;
- (f) the school receives any subsidy from the Government; and
- (g) the school is, in the opinion of the Permanent Secretary, financially sound."

(ca) In the proposed section 40AD(1)(a), by deleting "Director" and substituting "Permanent Secretary".

(cb) In the proposed section 40AD(1)(b), by deleting "out".

(cc) In the proposed section 40AD(1), by adding -
"(ca) deciding the mode of receiving government aid;"

(cd) In the proposed section 40AD(2)(a), by

adding "in accordance with the vision and mission set by the sponsoring body" after "school".

- (ce) In the proposed section 40AD(2)(c), by deleting "Director" and substituting "Permanent Secretary".
- (d) In the proposed section 40AD(2)(f), by deleting "self-evaluation" and substituting "self-improvement of the school".
- (da) In the proposed section 40AE(1), by deleting everything after "with," and substituting "the proper management, administration or operation of the school in accordance with the vision and mission and the general educational policies and principles set by the sponsoring body of the school.".
- (db) In the proposed section 40AE(2)(b), by adding "subject to section 40AEA," before "employ".
- (dc) In the proposed section 40AE(2)(d), by deleting "or received from the Government".
- (e) In the proposed section 40AE(2), by adding -
 - "(da) handle funds and assets received from the Government in the capacity of a trustee;".
- (ea) In the proposed section 40AE(3), by deleting paragraph (b) and substituting -
 - "(b) guidelines (if any) issued by the

sponsoring body of the school

for -

- (i) raising funds (including borrowing money); or
- (ii) entering into any contract, agreement or arrangement involving funds other than funds received from the Government;".

(eb) In the proposed section 40AE(3)(c), by deleting everything after "school) the" and substituting "relevant code of aid;".

(f) In the proposed section 40AE(3)(d), by deleting "Director" and substituting "Permanent Secretary".

(fa) In the proposed section 40AE, by adding -

"(4) Without prejudice to the generality of subsection (3), if a person is employed by the incorporated management committee of an aided school to occupy a post in the establishment of staff provided for in the relevant code of aid, his terms and conditions of service determined pursuant to subsection (2)(b) must conform with those provided for in the relevant code of aid in relation to the post.

(5) In this section, "relevant

code of aid" means -

- (a) in relation to an aided school which is a primary school, the code of aid for primary schools;
- (b) in relation to an aided school which is a secondary school, the code of aid for secondary schools;
- (c) in relation to an aided school which is a special school, a practical school or a skills opportunity school, the code of aid for special schools."

(fb) By adding after the proposed section 40AE -

**"40AEA. Power of sponsoring body
over employment of
teaching staff**

(1) The sponsoring body of a school which is also the sponsoring body of another school -

- (a) may request -
 - (i) the incorporated management committee of the first-mentioned

school to terminate the employment of a person as the principal of the school; and

- (ii) the incorporated management committee of the other school to recommend for approval the person to be the principal of the school under section 53 or 57;

(b) may request -

- (i) the incorporated management committee of the first-mentioned school to terminate the employment of a person as a teacher of the school; and

- (ii) the incorporated management committee of the other school to employ the person as a teacher of the same rank of the school.

(2) A sponsoring body shall not request the taking of any action under subsection (1) unless -

- (a) the action is conducive to the professional development of the person concerned;
- (b) the action is necessary to avoid or alleviate over-establishment of staff due to a reduction of classes in the school concerned; or
- (c) the Permanent Secretary approves the request upon -
 - (i) an application by the sponsoring body; and
 - (ii) other good cause being shown to his satisfaction.

(3) An incorporated management committee shall take such action within its lawful authority as is necessary for the compliance with a request made of it under subsection (1)."

- (g) In the proposed section 40AF(1), by deleting "or the sponsoring body" and substituting ", the sponsoring body or any other person".
- (ga) By deleting the proposed subheading "**Composition of incorporated management committee**" before the proposed section 40AH and substituting "**Supervisor**".
- (gb) By deleting the proposed section 40AH.

(gc) In the proposed section 40AI, by deleting everything before subsection (3) and substituting -

"40AI. Supervisor

(1) A school shall have a supervisor.

(2) The supervisor of a school -

(a) must be a manager of the school;

(b) must be -

(i) appointed by the sponsoring body of the school; or

(ii) elected by the managers of the school,

in accordance with the constitution of the incorporated management committee of the school; and

(c) shall hold and vacate office as such in accordance with the constitution.

(2A) If the supervisor of a school is unable to perform his functions during a period of not less than 28 days due to absence from Hong Kong or illness -

(a) (in the case of an appointed supervisor) the sponsoring body of the school shall

appoint another manager of the school as the acting supervisor to act in the place of the supervisor during the period;

- (b) (in the case of an elected supervisor) the other managers shall elect amongst themselves an acting supervisor to act in the place of the supervisor during the period."

- (gd) In the proposed section 40AI(3), by deleting "chairperson" where it twice appears and substituting "supervisor".
- (ge) In the proposed section 40AI(4), by adding "in writing" after "give notice".
- (h) In the proposed section 40AI(4)(a), by deleting "chairperson to the Director" and substituting "supervisor to the Permanent Secretary".
- (ha) In the proposed section 40AI(4)(b), by deleting everything after "subsequent" and substituting "supervisor to the Permanent Secretary within 14 days after his election or appointment."
- (hb) In the proposed section 40AI(5), by deleting "chairperson and such other information as

the Director" and substituting "supervisor and such other information as the Permanent Secretary".

- (hc) In the proposed section 40AJ, by deleting everything before subsection (1)(b) and substituting -

"40AJ. Functions of supervisor

(1) The supervisor of a school shall -

- (a) preside over the meetings of the incorporated management committee of the school;" .

- (hd) In the proposed section 40AJ(1)(b), by deleting "Director" and substituting "Permanent Secretary".
- (he) In the proposed section 40AJ(1)(d), by deleting "of the event to the Director" and substituting "in writing of the event to the Permanent Secretary".
- (hf) In the proposed section 40AJ(3), by deleting "chairperson" and substituting "supervisor".
- (hg) By deleting the proposed subheading **"Election and nomination of managers and vacation of office"** before the proposed section 40AK and substituting **"Composition of incorporated management committee and office of managers"**.
- (i) By adding immediately before the proposed

section 40AK -

**"40AJA. General requirement
of composition**

(1) An incorporated management committee shall, subject to the other provisions of this Ordinance, 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) (in the case of a school other than a bi-sessional school) one parent manager; or
 - (ii) (in the case of 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) not more than one alternate
sponsoring body manager;
- (h) where the constitution allows
the nomination of not more
than one teacher manager, one
alternate teacher manager;
and
- (i) 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) 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) 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 or a manager
appointed under section 41 shall not be
counted.

(5) No manager shall serve in an
incorporated management committee in more
than one capacity mentioned in any paragraph
of subsection (2).".

(ia) In the proposed section 40AK, by deleting
everything after "school may" and
substituting -

"nominate -

(a) 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;

and

- (b) a person for registration as alternate sponsoring body manager of the school."

- (ib) By deleting the proposed section 40AL and substituting -

"40AL. Nomination of teacher manager

(1) The principal of a school shall nominate such number of teachers of the school for registration as teacher manager or alternate teacher manager of the school as may be provided for in the constitution of the incorporated management committee of the school.

(2) A person nominated under subsection

(1) -

- (a) must be a teacher of the school;
- (b) must not be the principal of the school;
- (c) must be elected in that behalf in an election -
 - (i) held pursuant to the constitution of the incorporated management committee of the school;

(ii) in which all teachers of the school have equal voting right and right of candidature;

(iii) the voting for which is conducted by secret ballot; and

(iv) the system of which is otherwise fair and transparent.

(3) In this section, "teachers" includes, in relation to a special school, the specialist staff of the school."

(ic) In the proposed section 40AM(3), by deleting everything after "under its" and substituting -

"constitution only -

- (a) parents of current pupils of the school; or
- (b) serving teachers of the school,

may elect or become office-bearers of the body."

(id) In the proposed section 40AM(5), by deleting paragraphs (a) and (b) and substituting -

- "(a) must be a parent of a current pupil of the school;
- (b) must not be a teacher of the

school; and

(c) must be elected in that behalf in an election -

(i) conducted by the recognized parent-teacher association of the school;

(ii) in which all parents of the current pupils of the school have equal voting right and right of candidature;

(iii) the voting for which is conducted by secret ballot; and

(iv) the system of which is otherwise fair and transparent.".

(ie) In the proposed section 40AN(1), by deleting "of the school" and substituting "or sponsoring body of a school, as may be provided for in the constitution of the committee".

(if) In the proposed section 40AN(2), by deleting "of the school" and substituting "or sponsoring body of a school, as may be provided for in the constitution of the committee".

- (ig) In the proposed section 40AN(3), by adding before paragraph (a) -
- “(aa) its membership is open to all alumni of the school;”.
- (ih) In the proposed section 40AN(3), by adding after paragraph (b) “In this subsection, a reference to school includes, where applicable, a reference to the A.M. session or P.M. session of the school.”.
- (ii) In the proposed section 40AO(2)(a), by adding “or (where applicable) specialist staff” after “teacher”.
- (ij) In the proposed section 40AO(2)(b), by deleting “the parent” and substituting “a parent”.
- (ik) In the proposed section 40AO(2)(d)(ii), by deleting “or parent or a child” and substituting “or a grand-parent, parent, brother, sister, child or grand-child”.
- (il) In the proposed section 40AO(2)(d), by deleting everything after subparagraph (iii) and substituting “of the governing body (however described) of the sponsoring body of the school.”.
- (im) In the proposed section 40AP(2)(a), by deleting “may be registered” and substituting “shall be nominated for registration”.

- (in) In the proposed section 40AP(2)(b), by deleting "may be registered" and substituting "shall be nominated for registration".
- (io) In the proposed section 40AP, by adding -
 - "(2A) If the incorporated management committee of a school is established under section 40BM, the first parent manager of the school shall be nominated for registration as such at any time within 3 months from the establishment of the committee."
- (j) In the proposed section 40AP(3) and (4), by deleting "Director" and substituting "Permanent Secretary".
- (ja) In the proposed section 40AP, by deleting subsection (5) and substituting -
 - "(5) The Permanent Secretary shall decide an application under subsection (3) by -
 - (a) where he is satisfied that -
 - (i) the incorporated management committee has taken all reasonable steps to secure compliance with the requirement; and
 - (ii) it is reasonable in the

circumstances of the
case to grant the
exemption applied for,
granting the exemption
subject to such condition (if
any) as he thinks fit; or
(b) where he is not satisfied in
the manner prescribed in
paragraph (a), refusing to
grant the exemption."

(jb) in the proposed section 40AP(6), by deleting
"Director shall not take any action under
section 22, 31 or 41 in respect of the
school concerned only because that" and
substituting "Permanent Secretary shall not
take any action under section 22, 31 or 41
in respect of the school concerned only
because".

(jc) In the proposed section 40AQ, by adding -

"(1A) An alternate sponsoring body
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) any

sponsoring body manager
of the school is absent
from the meeting;

- (b) (in the case of a matter
to be resolved
otherwise) any
sponsoring body manager
of the school is, for
any reason, unable to
vote on the matter."

(jd) In the proposed section 40AQ(4), by deleting
"30(2), 31(2)(a),".

(je) In the proposed section 40AQ(4), by adding
before paragraph (a) -

- "(aa) an alternate sponsoring body
manager shall not be counted
unless there is a vacancy of
sponsoring body manager of the
school for the time being;"

(jf) In the proposed section 40AQ(5), by adding
before paragraph (a) -

- "(aa) an alternate sponsoring body
manager of the school shall not be
counted unless there is a vacancy
of sponsoring body manager of the
school for the time being;"

(jg) In the proposed section 40AQ(6), by adding
"(1A)," after "subsection".

(jh) In the proposed section 40AQ, by adding -

"(6A) An alternate teacher manager and a teacher manager of a school shall be elected in the same manner for nomination for registration as a manager.

(6B) An alternate parent manager and a parent manager of a school shall be elected in the same manner for nomination for registration as a manager."

(k) By deleting the proposed section 40AR and substituting -

"40AR. Endorsement of application for registration as manager

If a person is nominated for registration as a manager of a school under this Part and he applies for such registration, his application shall be -

- (a) endorsed by the body or person that nominates him; and
- (b) (where he is on the list of proposed managers referred to in section 40BL(1) (a) or 40BW(1) (a)) endorsed by the sponsoring body in such manner as the

Permanent Secretary may
specify."

- (ka) In the proposed section 40AS(2), by deleting "one month" and substituting "three months".
- (kb) In the proposed section 40AS(2)(a), by deleting "or elected".
- (kc) In the proposed section 40AS(2)(b), by deleting "Director" and substituting "Permanent Secretary".
- (kd) In the proposed section 40AS(3), by deleting "Director" and substituting "Permanent Secretary".
- (l) In the proposed section 40AS(4), by deleting "or elected".
- (m) By deleting the proposed section 40AT.
- (ma) By adding immediately before the proposed section 40AU -

"40ATA. Parent manager or independent manager ceases to hold office under certain circumstances

(1) If a parent manager ceases to be a parent of a current pupil of the school in a school year, his term of office as a manager shall continue until its expiry or the end of the school year, whichever is the earlier.

(2) If in a school year an independent manager becomes a person

referred to in section 40AO(2) (a), (b) or (d), his term of office as a manager shall continue until its expiry or the end of the school year, whichever is the earlier."

- (n) In the proposed section 40AU(1), by deleting "Director" and substituting "Permanent Secretary".
- (na) In the proposed section 40AU(2) (a), by deleting "or a teacher of the school".
- (nb) In the proposed section 40AU(2) (b), by deleting "a teacher of" and substituting "employed in".
- (nc) In the proposed section 40AV, in the heading, by deleting "**teacher manager, etc.**" and substituting "**managers**".
- (o) In the proposed section 40AV, by deleting subsections (1) and (2) and substituting -
 - "(1) An incorporated management committee shall, upon receiving a request under subsection (2), (3), (4) or (5), issue a notice in writing to the Permanent Secretary as regards the cancellation of the registration of the manager specified in the request.
 - (2) If -
 - (a) the teachers and (where applicable) specialist staff

of a school pass a resolution that any teacher manager or alternate teacher manager of the school is not suitable to continue to hold office as such; and

- (b) the resolution is passed in a manner which is, as far as reasonably practicable, similar to the manner in which the manager is elected for nomination,

the principal of the school shall make a written request to the incorporated management committee to issue a notice under subsection (1) in respect of the manager."

- (ob) In the proposed section 40AV(6), by deleting "(2),".
- (oc) In the proposed section 40AV(6)(b), by deleting "or elected for nomination, as may be appropriate" and substituting "for nomination".
- (od) In the proposed 40AV, by adding -

"(6A) The incorporated management committee of a school may issue a written notice to the Permanent Secretary as regards the cancellation of the registration of any independent

manager of the school." .

(oe) In the proposed section 40AW(1) (a), by deleting "Director" and substituting "Permanent Secretary" .

(p) In the proposed section 40AW, by deleting subsections (2) and (3) and substituting -

"(2) An incorporated management committee may by resolution amend its constitution in the manner provided for in the constitution.

(3) An amendment to the constitution of an incorporated management committee -

(a) shall be lodged with the Permanent Secretary; and

(b) shall not take effect before the expiry of one month after it is so lodged.

(3A) The Permanent Secretary may, by notice in writing to the incorporated management committee concerned, object to an amendment lodged with him before the amendment takes effect. The reason for the objection shall be specified in the notice.

(3B) Subject to section 66(1)(ba), an amendment objected to by the Permanent Secretary shall be void.

(3C) The Permanent Secretary may, by notice to an incorporated management committee, require its constitution to be amended in such manner as he may specify to secure compliance with law and general education policies. The committee shall amend its constitution accordingly.

(3D) Subsections (3) and (3A) do not apply to an amendment under subsection (3C).

(3E) If an objection under subsection (3A) to an amendment of constitution which is intended to take effect on a certain date ("original effective date") is reversed under section 64, the amendment shall -

- (a) where the Permanent Secretary does not appeal against the reversal under section 65 within the period of 14 days referred to in that section, take effect -

(i) at the expiry
of that
period; or

(ii) on the
original
effective
date,

whichever is the later;

(b) where the Permanent
Secretary appeals
against the reversal
under section 65 and the
reversal is upheld, take
effect on -

(i) the date on
which the
reversal is
upheld; or

(ii) the original
effective
date,

whichever is the

later.".

(pa) In the proposed section 40AW(4), by deleting
"the approval of an amendment to its
constitution, lodge a copy of its
constitution as amended with the Director"
and substituting "any amendment to its

constitution takes effect, lodge a copy of its constitution as amended with the Permanent Secretary".

- (q) In the proposed section 40AX(1), by deleting ") to a manager other than an alternate manager" and substituting "and regulation 76 of the Education Regulations (Cap. 279 sub. leg. A)) to any manager of the school".
- (r) By deleting the proposed section 40AY and substituting -

"40AY. Permanent Secretary's nominee may attend meeting

If it appears to the Permanent Secretary that the attendance of any meeting of the incorporated management committee of the school by a public officer will be conducive to the operation and performance of the school -

- (a) the Permanent Secretary may, by notice in writing to the committee, nominate the public officer to attend the meeting; and
- (b) the public officer may attend the meeting and offer such advice at the

meeting as he thinks
fit." .

(s) In the proposed section 40AZ(1) (a) (ii) and (c), by deleting "Director" wherever it appears and substituting "Permanent Secretary" .

(sa) In the proposed section 40AZ(2) (b), by deleting "chairperson of the incorporated management committee and one other manager authorized" and substituting "supervisor of the school and one other manager authorized by the incorporated management committee of the school" .

(sb) In the proposed section 40AZ(4) (c) and (e) and (5) (a), by deleting "Director" and substituting "Permanent Secretary" .

(t) In the proposed section 40BC, by deleting paragraph (c) and substituting -

"(c) the properties owned by the committee immediately before its dissolution shall be vested in the Permanent Secretary as the corporation sole constituted under the Permanent Secretary for Education and Manpower Incorporation Ordinance (Cap. 1098) who shall -

(i) 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;

(ii) where after such settlement (if any) any property which was donated to the committee remains, return the property to the donor unless the donor indicated at the time of the donation that he did not wish to reclaim the property in the event of the dissolution of the committee;

(iii) where after such settlement or return (if any) any property remains, apply the property towards any purpose which is conducive to education

in Hong Kong." .

(ta) In the proposed section 40BF, by deleting paragraphs (a) and (b) and substituting -

- "(a) keep a register of all declarations made under section 40BD;
- (b) keep a register of all disclosures made under section 40BE;
- (c) permit any inspector of schools to inspect the register kept under paragraph (a) or (b) at any reasonable time to enable the Permanent Secretary to ascertain where section 40BD or 40BE, as the case may be, is complied with; and
- (d) permit the public to inspect the register kept under paragraph (b) at any reasonable time." .

(tb) In the proposed section 40BG(2), by deleting everything after "omitted to be" where it first appears and substituting "done by him in good faith in the performance or purported performance of any function of his office as the manager." .

(tc) In the proposed section 40BG, by adding -

- "(2A) No civil proceedings shall be brought against a manager of a school for anything done or omitted to be done

by or on behalf of the incorporated management committee of the school unless he has not acted in good faith in relation to the thing or omission.".

(te) In the proposed section 40BG(3), by deleting "subsection (2)(b)" and substituting "subsection (2)".

(u) In the proposed section 40BH, by deleting everything before "in writing" and substituting -

"40BH. Establishment of incorporated management committee in respect of operating DSS school or specified school

The sponsoring body of-

(a) a DSS school which -

(i) is a school without IMC; and

(ii) has commenced operation (whether or not before 1 January 2005); or

(b) a specified school,

may notify the Permanent Secretary".

(ua) By deleting the proposed section 40BI.

(ub) By deleting the proposed section 40BJ and

substituting -

**"40BJ. Submission for the purpose
of establishment of
incorporated management
committee in respect of
operating school**

- (1) This section applies to -
 - (a) an aided school which -
 - (i) is a school without
IMC; and
 - (ii) has commenced
operation before 1
January 2005;
 - (b) a DSS school in respect
of which a notice has
been given under section
40BH; and
 - (c) a specified school in
respect of which a
notice has been given
under section 40BH.

(2) The sponsoring body of a school shall submit to the Permanent Secretary a draft of the constitution of the proposed incorporated management committee.

- (3) A submission made under subsection (2) shall be made -
 - (a) in the case of an aided school, by 1 January

2009;

- (b) in the case of a DSS school or specified school, within 6 months from the date of the notice given under section 40BH in respect of the school.

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

(uc) In the proposed section 40BK, by deleting "Director" and substituting "Permanent Secretary".

(ud) By deleting the proposed section 40BL and substituting -

"40BL. Approval of list of proposed managers

(1) Upon the approval of the draft constitution, the sponsoring body shall submit to the Permanent Secretary -

- (a) a list of the proposed managers of the school;

and

- (b) an application by each proposed manager for registration as a manager of the school that complies with section 28.

(2) The Permanent Secretary shall approve a list of proposed managers submitted under subsection (1) if -

- (a) the composition of the proposed incorporated management committee -
 - (i) complies with this Part; and
 - (ii) is consistent with the draft of the constitution as approved under section 40BK; 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." .

- (ue) In the proposed section 40BM(1), by deleting "Director" and substituting "Permanent Secretary" .
- (v) In the proposed section 40BM(2)(c), by deleting everything before "shall be established" and substituting "the incorporated management committee" .
- (va) In the proposed section 40BM(3)(c), by deleting "chairperson and one other manager authorized" and substituting "supervisor of the school and one other manager authorized by the committee" .
- (vb) In the proposed section 40BM(4), by adding "by the Government" after "payable" .
- (vc) In the proposed section 40BP(1), by deleting "before the commencement date" .
- (vd) In the proposed section 40BR(1)(b), by deleting "Director" and substituting "Permanent Secretary" .
- (ve) In the proposed section 40BR(1), by deleting everything after paragraph (b) and substituting -
 - "the Permanent Secretary may -
 - (c) without prejudice to section 41, appoint one or more persons to be

the managers of the
school; and

- (d) without prejudice to
section 31, cancel the
registration of any
manager of the school."

(vf) In the proposed section 40BR, by adding -

"(1A) A manager appointed under
subsection (1) -

- (a) shall hold office
until -

- (i) the term of
office for
which he is
appointed
expires; or

- (ii) the
incorporated
management
committee of
the school is
established,

whichever is the
earlier; and

- (b) shall for the purposes
of this Ordinance be
treated as a manager
appointed under section

41." .

- (w) In the proposed section 40BR(2), by deleting "Director" and substituting "Permanent Secretary" .
- (wa) In the proposed section 40BS, by deleting "Director" and substituting "Permanent Secretary" .
- (wb) By deleting the proposed section 40BT.
- (wc) In the proposed section 40BU, by deleting everything before subsection (3) and substituting -

"40BU. Submission for the purpose of establishment of incorporated management committee in respect of planned school

- (1) This section applies to -
 - (a) an aided school the scheduled opening date of which falls on or after 1 January 2005; and
 - (b) a DSS school in respect of which a notice has been given under section 40BS.

(2) The sponsoring body of a school shall submit to the Permanent Secretary -

- (a) a draft of the

constitution of the
proposed incorporated
management committee;
and

(b) an application for
registration of the
school under section
11."

- (wd) In the proposed section 40BU(3)(b), by deleting "Director" and substituting "Permanent Secretary".
- (we) In the proposed section 40BU(4), by deleting "Director" and substituting "Permanent Secretary".
- (x) In the proposed section 40BV, by deleting "Director" and substituting "Permanent Secretary".
- (xa) By deleting the proposed section 40BW and substituting -

**"40BW. Approval of list of
proposed managers**

(1) Upon the approval of the
draft constitution, the sponsoring body
shall submit to the Permanent
Secretary -

(a) a list of the proposed
managers of the school;
and

(b) an application by each proposed manager for registration as a manager of the school that complies with section 28.

(2) The Permanent Secretary shall approve a list of proposed managers submitted under subsection (1) if -

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

(i) complies with this Part; and

(ii) is consistent with the draft of the constitution as approved under section 40BV; 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." .

- (xb) In the proposed section 40BX(1), by deleting "Director" and substituting "Permanent Secretary" .
- (xc) In the proposed section 40BX(2), by deleting everything after "incorporation," and substituting "the incorporated management committee shall be established as a body corporate with perpetual succession." .
- (xd) In the proposed section 40BX(3)(c), by deleting "chairperson and one other manager authorized" and substituting "supervisor of the school and one other manager authorized by the committee" .
- (xe) In the proposed section 40BZ(1)(a), by deleting "a sponsoring body" and substituting "the scheduled opening date of an aided school falls on or after 1 January 2005 and the sponsoring body of the school" .
- (y) In the proposed section 40BZ(1) and (2), by deleting "Director" wherever it appears and substituting "Permanent Secretary" .
- (ya) By deleting everything after the proposed section 40BZ and substituting -

"40CA. 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 incorporated management committee of the school is established under section 40BX;

(b) he enters into the contract with the written authority of the sponsoring body of the school;

(c) before he enters into the contract he advises the other party that the incorporated management committee of the school will upon its establishment become a party to the contract by virtue of this section; and

(d) the contract is subsisting immediately before the establishment of the committee,

the following provisions apply on the

establishment of the committee -

- (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.

**Provisions applicable where
a school ceases to be
an IMC school**

**40CB. An aided IMC school may
become a DSS school
without IMC**

(1) If an IMC school which is an aided school becomes a DSS school, the sponsoring body of the school may apply to the Permanent Secretary for an approval for the school to become a school without IMC.

(2) The Permanent Secretary shall grant an approval applied for if -

- (a) all conditions (if any) subject to which the school may become a DSS school have been fulfilled;
- (b) a company has been incorporated under the Companies Ordinance (Cap. 32) for the purposes of operating the school as stated in its memorandum of association;
- (c) the company has been designated as a school management company under section 3(2);
- (d) applications have been made under section 28 for the registration of a sufficient number of people as the managers of the DSS school; and
- (e) a person has been recommended under section 38 to be the supervisor of the DSS school.

(4) Upon the granting of an approval in relation to a school -

- (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) Schedule 2 has effect in relation to the dissolution of the committee."

New

By adding -

"17A. Subheading substituted

The subheading "**Appointed managers**" before section 41 is repealed and the following substituted -

"PART IIIC

PERMANENT SECRETARY MAY APPOINT MANAGERS" ."

18

- (a) In the heading, by deleting "**Director**" and substituting "**Permanent Secretary**".
- (b) By deleting paragraph (a) (i) and substituting -

"(i) in paragraph (b), by repealing ";
or" and substituting a
semicolon;" .

(c) By deleting paragraph (a)(iii).

22

By deleting the proposed section 57A and
substituting -

**"57A. Selection of principal
of IMC school**

(1) This section applies to an IMC school.

(2) Before recommending any person under
section 57, the incorporated management committee
shall appoint a principal selection committee.

(3) A principal selection committee shall -

(a) be accountable to the incorporated
management committee; and

(b) be composed of -

(i) representatives of the
sponsoring body of the
school;

(ii) managers of the school acting
as representatives of the
incorporated management
committee; and

(iii) (where applicable) such other
persons as may be provided
for in the constitution of
the incorporated management

committee.

(4) A principal selection committee shall select in an open, fair and transparent manner a suitable person for recommendation under section 57 from candidates nominated in an open, fair and transparent manner by the sponsoring body or the incorporated management committee of the school or both as may be provided for in the constitution of the incorporated management committee.

(5) The incorporated management committee of a school shall recommend under section 57 the person selected by the principal selection committee.

(6) Subsections (2), (3), (4) and (5) do not apply if -

- (a) the sponsoring body of the school makes a request of the incorporated management committee under section 40AEA(1)(a)(ii); or
- (b) the Permanent Secretary exempts, on an application by the sponsoring body or incorporated management committee and upon good cause being shown to his satisfaction, the committee from those subsections in respect of any principal of the school."

24 By deleting "40AH(2)(b)" and substituting
"40AJA(2)(b)".

26 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

26(c) (a) By deleting -
"Section 40BI. Sponsoring body."

and substituting -

"Section 40AW. Incorporated
management
committee."

(b) By deleting "Section 40BR(1)(c)(i)" and
substituting "Section 40BR(1)(c)".

(c) By deleting "Section 40BR(1)(c)(ii) or (d)"
and substituting "Section 40BR(1)(d) or
(1A)".

(d) In paragraph (c), by deleting -

"Section 40BT. Sponsoring body."

New By adding _

**"26A. Permission to operate school
or to act etc. pending appeal**

Section 66(1) is amended by adding -

"(ba) by notice in writing to an
incorporated management
committee permit an amendment

to the constitution of the
committee to take effect
after he has objected to the
amendment under section
40AW(3A);".

28 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

29 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

30 In the heading, by deleting "**Director**" and
substituting "**Permanent Secretary**".

30(b) In the proposed section 83(1AA), by deleting
"Director" where it twice appears and
substituting "Permanent Secretary".

31(b) By deleting the proposed section 84(4) and
substituting -

"(4) The Permanent Secretary may waive -

(a) by circular issued to schools
generally or a particular type of
schools, wholly or partly the
requirement of any regulation in
respect of a particular type of

schools or teachers;

(b) on application by a supervisor or incorporated management committee of a school and by notice in writing to the applicant, wholly or partly the requirement of any regulation in respect of the school, the applicant or a particular teacher of the school; and

(c) on application by a teacher and by notice in writing to the applicant, wholly or partly the requirement of any regulation in respect of the applicant,

on such conditions, if any, as he thinks fit."

32 (b) By deleting subparagraph (iii) and substituting -

"(iii) in paragraph (b), by adding
"without IMC" after "school";

(iv) in paragraph (i), by repealing "a supervisor or any other manager of a school" and substituting "the supervisor or a manager of a school without IMC";".

32 (c) By deleting the paragraph and substituting -

"(c) in subsection (3) -

- (i) in paragraph (a), by adding
"without IMC" after "school";
- (ii) by repealing paragraph (d);
- (iii) in paragraph (n), by adding
"without IMC" after
"school";".

32(d)

By deleting the paragraph and substituting -

"(d) by adding -

"(6) If -

- (a) an IMC school is operated,
with the consent or
connivance of any manager of
the school, in contravention
of section 19(1); or
- (b) an incorporated management
committee, with the consent
or connivance of any manager
of the school concerned -
 - (i) fails to comply
with any notice
served on it under
section 82; or
 - (ii) in or in connection
with any
application under
this Ordinance

makes any statement
or furnishes any
information which
is false in any
material particular
and which it knows
or reasonably ought
to know is false in
such particular,

the manager 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 -

- (a) an IMC school is operated,
with the consent or
connivance of any manager of
the school, in any name other
than its registered name;
- (b) an incorporated management
committee, with the consent
or connivance of any manager
of the school concerned,
employs or permits any person
to teach in a school in
contravention of section
42(1) or (2); or
- (c) an IMC school contravenes
section 86 with the consent

or connivance of any manager
of the school,

the manager commits 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 section 74(2A) or (2B)
with the consent or connivance of any
manager of the school concerned, the manager
commits an offence and shall be liable on
conviction to a fine at level 3 and to
imprisonment for 3 months."."

32 By deleting paragraph (e).

33 (a) In the heading, by deleting "1 and 2".

(b) In the proposed Schedule 1, in section 2(c),
by adding "management" after "incorporated".

(c) In the proposed Schedule 1, by adding -

**"2A. Continuance of certain
contracts**

(1) This section applies to a
contract that is -

(a) entered into by the
supervisor, principal or
sponsoring body or a
manager of a school
("original party") with

a person before 1
January 2005;

(b) entered into for the
supply of goods or
service by the person
for the benefit of the
school (but not any
other school); and

(c) is subsisting
immediately before the
transition date.

(2) Upon the commencement of the
transition date -

(a) (if the money paid in
consideration of the
goods or service is
provided by the
Government) the
transferee shall, with
the consent of the
person and the
sponsoring body, for all
purposes substitute for
the original party as
the party to the
contract, and shall be
regarded as having
always been the party;

(b) (if the money paid in consideration of the goods or service is not provided by the Government) the sponsoring body or, where the sponsoring body so decides, the transferee shall, with the consent of the person, for all purposes substitute for the original party as the party to the contract, and shall be regarded as having always been the party.

(3) Where a substitution takes place under subsection (2) -

- (a) all rights and liabilities of the original party under the contract shall vest in the transferee or sponsoring body, as may be appropriate; and
- (b) the original party shall cease to be a party to

the contract.".

- (d) In the proposed Schedule 1, in section 3(1), by adding "management" after "incorporated".
- (e) In the proposed Schedule 1, in section 4(1), by deleting "related to the management of the school" and substituting "that are relevant to the functions and powers of the transferee".
- (f) In the proposed Schedule 2, by deleting everything before section 2 and substituting -

"SCHEDULE 2 [ss. 40BQ & 40CB]

1. Interpretation

In this schedule -

- (a) where this Schedule applies under section 40BQ -

- (i) "transferor" means the school management company of the relevant school;
- (ii) "transferee" means the incorporated management committee of the relevant school;
- (iii) "transition date"

means the date on
which the
incorporated
management
committee of the
relevant school is
established;

(b) where this Schedule applies
under section 40CB -

(i) "transferor" means
the incorporated
management company
of the relevant
school;

(ii) "transferee" means
the school
management
committee of the
relevant school;

(iii) "transition date"
means the date on
which the
incorporated
management
committee of the
relevant school is
dissolved."

(g) In the proposed Schedule 2, in section 2(7),

by deleting everything after "Land" and substituting -

"Registry -

- (a) where this Schedule applies under section 40BQ, a copy of the certificate of incorporation issued to it under section 40BM(1) or 40BX(1) of this Ordinance; or
- (b) where this Schedule applies under section 40CB -

- (i) a copy of the certificate of incorporation issued to it under the Companies Ordinance (Cap. 32);

- (ii) a copy of the approval granted in respect of the school under section 40CB;

and

(iii) a copy of the
text of
section 40CB
and this
Schedule.".

- (h) In the proposed Schedule 2, in section 3(2),
by deleting "incorporated management
committee" and substituting "transferee".
- (i) In the proposed Schedule 2, in section 9(1),
by adding "in the control or possession of
the transferor" after "school".
- (j) By adding -

"SCHEDULE 3 [ss. 40AB &
40ABA]

Specified Schools

School Name	School Address
Confucius Hall Middle School	77 Caroline Hill Road, Hong Kong
Fung Kai No. 2 Secondary School	15 Jockey Club Road, Sheung Shui, New Territories
Hong Kong Sam Yuk Secondary School	17A Ventris Road, Hong Kong

International Christian Quality Music Secondary and Primary School	372 Shun Ning Road, Sham Shui Po, Kowloon.
ISF Academy	373 Queen's Road East, Wanchai, Hong Kong
Kowloon Sam Yuk Secondary School	52 Boundary Street, Mongkok, Kowloon
Mu Kuang English School	55 Kung Lok Road, Kwun Tong, Kowloon
Phoenix International School	5 Tonkin Street, Shamshuipo, Kowloon
Po Leung Kuk Choi Kai Yau School	6 Caldecott Road, Shamshuipo, Kowloon
Sam Yuk Middle School	1111 Clear Water Bay Road, Sai Kung, New Territories
S.K.H. All Saints'	11 Pak Po Street,

Middle School	Kowloon
Tai Po Sam Yuk Secondary School	2 Tai Po Tau Drive, Tai Po, New Territories
United Christian College	9 & 11 Tong Yam Street, Tai Hang Tung, Shamshuipo, Kowloon".

New

By adding -

"34A. Approval for roof playgrounds

Regulation 16 is amended by repealing
", verandah".

34B. Structural requirements

Regulation 17(2) is amended by
repealing ", verandah".

**34C. Pupils using roof playgrounds
to be under supervision**

Regulation 18 is amended by repealing
", verandah".

**34D. Numbers of pupils allowed on
a roof playground or balcony**

Regulation 19 is amended -

(a) by repealing paragraph (2);

(b) in paragraph (3), by
repealing ", verandah".

**34E. Limitation of activities on
roof playgrounds**

Regulation 20 is amended by repealing
", verandah".

35

By deleting the clause and substituting -

"35. Safety precautions

Regulation 21(2) is repealed and the
following substituted -

"(2) The principal and (in
the case of a school without IMC)
supervisor shall ensure that no
instruction is given in the use of
tools or the operation of machines
or in science experiments except
by -

(a) a responsible
teacher;

(b) (in the case of
tools or machines)
a workshop
instructor employed
in the school to
assist a
responsible

teacher; or

(c) (in the case of science experiments) a laboratory technician employed in the school to assist a responsible teacher."."

New

By adding -

"36A. Refreshment places

Regulation 47 is amended by repealing "shop" and substituting "tuckshop".

36B. Sanitary condition

Regulation 48(2) is repealed."

37(b)

In the proposed regulation 61(3), by deleting "Director" and substituting "Permanent Secretary".

New

By adding -

"37A. Formal receipts

Regulation 63 is amended by adding "of a school without IMC" before "shall be"."

38 By deleting the clause and substituting -

"38. Prohibition of collections without permission of Permanent Secretary

Regulation 66 is amended by adding
before paragraph (1) -

"(1A) This regulation does not
apply to an IMC school."."

40 By deleting the clause.

41 By deleting everything after "Regulation" and
substituting "75(1) is amended by repealing ",
require the managers of any" and substituting "of
a school without IMC, require the managers of
the"."

42 In the proposed regulation 75A -

- (a) in paragraph (1), by deleting
"Director" and substituting "Permanent
Secretary";
- (b) in paragraph (2), by deleting "Director
may" and substituting "Permanent
Secretary may";
- (c) in paragraph (2)(c), by deleting "to
the Director under section 40AV of the
Ordinance for" and substituting "and
issuing a notice under section 40AV of
the Ordinance as regards";

- (d) in paragraph (2)(d), by deleting "chairperson, the secretary and the treasurer" and substituting "supervisor of the school and the secretary and treasurer of the committee";
- (e) in paragraph (2)(e), by deleting "duties of the chairperson, the secretary and the treasurer" and substituting "functions of the supervisor of the school and the secretary and treasurer of the committee";
- (f) in paragraph (2)(g), by deleting everything after "for" and substituting "the selection of the principal;".

44

By deleting the clause and substituting -

"44. Regulation substituted

Regulation 76 is repealed and the following substituted -

"76. Teachers' appointment or dismissal needs approval by managers

(1) The appointment of any teacher who is to be employed in the school -

- (a) to occupy a teacher post in the establishment of

staff provided for
in the code of aid
for primary
schools, code of
aid for secondary
schools or code of
aid for special
schools; or

- (b) for a term for not
less than 6 months,

shall be approved by the majority
of the managers of the school.

(2) The dismissal of any
teacher who is employed in the
school -

- (a) to occupy a teacher
post in the
establishment of
staff provided for
in the code of aid
for primary
schools, code of
aid for secondary
schools or code of
aid for special
schools; or

- (b) for a term for not
less than 6 months,

shall be approved by the majority of the managers of the school at a meeting of the management committee or incorporated management committee (as may be appropriate).".".

- 45
- (a) In the heading, by deleting "**Director**" and substituting "**Permanent Secretary**".
 - (b) By deleting everything after "repealing" and substituting "everything from "The" to "thereupon" and substituting "The Permanent Secretary may by notice in writing to the management authority forbid the granting of a holiday on any specified day. The management authority and the principal shall upon such notice".".

New

By adding -

"46A. Regulation substituted

Regulation 85 is repealed and the following substituted -

"85. Specifications for exit door

Any exit door of the premises of any school must be capable of being opened from inside without using a key when any pupil who

does not reside in the school premises is in the school premises."

46B. Size of classes

Regulation 88 is amended by adding "(other than an IMC school)" after "course".

46C. Hours of instruction

Regulation 89 is repealed.

46D. Regulation substituted

Regulation 93 is repealed and the following substituted -

"93. Restriction on training for teachers

Unless permitted by the Permanent Secretary, no school shall provide any course of training the completion of which qualifies the participant for being registered as a registered teacher."

46E. Non-resident pupils

Regulation 95 is repealed."

substituting **"Permanent Secretary"**.

48 By deleting everything after "Regulation" and substituting "96(1) is amended by repealing "supervisor and"."

New By adding -

"48A. Expelled pupil not to enter school premises without permission

Regulation 97 is amended -

- (a) in paragraph (1), by repealing "Permanent Secretary" and substituting "management authority of the school";
- (b) by repealing paragraph (2)."

49 By deleting the clause and substituting -

"49. Business or trading operation

Regulation 99A(4) is amended, in paragraph (a) of the definition of "school in receipt of public funds", by adding "which is a school without IMC" after "school".

49A. Regulation added

The following is added -

"99B. Restriction on use of

**profit arising from
business or trading
arrangement by
incorporated management
committee**

(1) This regulation applies to an IMC school.

(2) The incorporated management committee of a school shall not, without the prior permission in writing by the Permanent Secretary, apply any profits or net income arising from -

- (a) any business or trading undertaking operated by or with the permission of the committee on the school premises; or
- (b) any business or trading arrangement entered into by the committee, directly or indirectly, with any person for the supply of food, drinks, books, stationery, uniforms or any other thing that is required by the school to be possessed or used by its pupils,

for any purpose not directly benefiting

the pupils of the school."."

50

By deleting the clause and substituting -

"50. Offences

Regulation 101 is amended -

(a) in paragraph (1) -

(i) by repealing "19(1) or
(2),";

(ii) by repealing ", 89(1);

(b) by repealing paragraphs (2), (3),
(4), (5), (6), (6A), (7) and (8)
and substituting -

"(2) Any manager of a school
without IMC who contravenes
regulation 61, 63 or 66(2) shall
be guilty of an offence.

(2A) Any manager of an IMC
school who contravenes regulation
61 shall be guilty of an offence.

(3) If regulation 10, 22,
37, 62, 65, 84(1) or (2) or 93 is
contravened in respect of a school
without IMC, the managers of the
school shall each be guilty of an
offence.

(3A) If regulation 10, 22, 37,
84(1) or (2) or 93 is contravened
in respect of an IMC school with

the consent or connivance of any manager of the school, the manager shall be guilty of an offence.

(4) The supervisor of a school without IMC who contravenes regulation 21(1) or (2), 53(1), 61, 63, 64, 77, 79, 81, 82, 83(1) or (3), 92(2) or (12) or 99A(2) shall be guilty of an offence.

(4A) If an incorporated management committee contravenes regulation 53(1), 61, 64, 77 or 99B(2) with the consent or connivance of any manager of the school, the manager shall be guilty of an offence.

(5) The principal of a school without IMC who contravenes regulation 21(2), 32, 38, 39(1), 52(1), 53(2) or 83(2) or (3) shall be guilty of an offence.

(5A) The principal of an IMC school who contravenes regulation 21(1) or (2), 32, 38, 39(1), 52(1) or 53(2) 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.

(6) If regulation 16, 31, 34(2), 46A, 67, 80, 85, 87(2), 88, 89A, 90 or 92(4) or (9) is contravened in respect of a school without IMC, the supervisor and principal of the school shall each be guilty of an offence.

(6AA) If regulation 16, 31, 34(2), 85, 87(2) or 92(4) or (9) is contravened in respect of an IMC school, the principal of the school shall be guilty of an offence.

(6A) Any supervisor or manager who contravenes regulation 99A(1) or (3) shall be guilty of an offence.

(6B) If the management committee of a school without IMC contravenes regulation 99A(1) or (3), the managers of the school shall each be guilty of an offence.

(7) Any teacher who contravenes regulation 33, 58, 61,

63 or 66(2) shall be guilty of an offence.".

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

"(9) If a person is charged with an offence under paragraph (6B), it shall be a defence to the charge if he proves that-

(a) the other members of the management committee concerned contravened regulation 99A(1) or (3) without his knowledge or consent; or

(b) he took all reasonable steps to prevent the other members of the management committee from

contravening
the
regulation."."

51 By deleting everything after "by" and
substituting "repealing everything before "by
virtue" and substituting "A person who is guilty
of an offence under regulation 101(6) or
(6AA) " " ."

New By adding -

"Societies Ordinance

**58. Persons to which the Ordinance
does not apply**

The Schedule to the Societies Ordinance
(Cap. 151) is amended by adding -

"(4A) Any incorporated
management committee as defined in
section 3(1) of the Education
Ordinance (Cap. 279)."."

Schedule 1 (a) Under the heading "Education Ordinance (Cap.
279)", by deleting "and (2)".
(b) Under the heading "Education Regulation (Cap.
279 sub. leg.", by -
(i) deleting "48(2),";
(ii) deleting "63,";
(iii) deleting "94, 98(2) and 99A(2)"

and substituting "94 and 98(2)".

Schedule 3 By deleting "Sections 3(1) (definition of
"supervisor"), 8(1)(d)(i)" and substituting
"Sections 8(1)(d)(i)".

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17 刪去建議的第 40BJ 條而代以——

“40BJ. 為就現有學校設立法團校董會而作出呈遞

(1) 本條適用於——

(a) 符合以下描述的資助學校——

(i) 屬不設法團校董會學校；及

(ii) 在 2005 年 1 月 1 日前已開始營辦；

(b) 屬直資學校並已就其根據第 40BH 條發出通知的學校；及

(c) 屬指明學校並已就其根據第 40BH 條發出通知的學校。

(2) 學校的辦學團體須向常任秘書長呈遞建議的法團校董會的章程的草稿。

(3) 根據第(2)款作出的呈遞須——

(a) (如屬資助學校)在教育統籌局局長藉在憲報刊登的公告指明作出的呈遞的限期前提出；

(b) (如屬直資學校或指明學校)在就該校根據第 40BH 條發出的通知的日期的 6 個月內提出。

(4) 凡常任秘書長為令他能夠行使他在第 40BK 或 40BL 條下的權力而合理地要求關乎該項呈遞的進一步資料，辦學團體須向他提供該等資料。

(5) 第(3)(a)款所指的公告須經立法會批准。

(6) 現宣布第(3)(a)款所指的公告是附屬法例。”。

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12 刪去(b)段而代以一

“(b) 加入一

“(1A) 如一

(a) 申請人一

(i) 是《破產條例》(第 6 章)所指的破產人，或已根據該條例訂立自願安排；或

(ii) 曾在香港或其他地方被裁定已犯可判處監禁的刑事罪行，

常任秘書長可拒絕將申請人註冊為某間學校的校董；

(b) 申請人未滿 18 歲，常任秘書長可拒絕將該人註冊為某間學校的校董；

(c) 申請人一

(i) 已年滿 70 歲，而他沒有出示由註冊醫生於申請的日期前兩個月內發出並證明申請人在健康方面適合執行校董職能的醫生證明書；或

(ii) 未滿 70 歲，而他在常任秘書長提出要求後，沒有出示由註冊醫生於該項要求的日期後發出並證明申請人在健康方面適合執行校董職能的醫生證明書，

常任秘書長可拒絕將該人註冊為某間學校的校董；或

- (d) 有關申請是就法團校董會學校提出的，或是就根據 40BJ 或 40BU 條作出的呈遞所關乎的學校提出的，而申請人已註冊為 5 間或多於 5 間學校的校董，常任秘書長可拒絕將該人註冊為該校的校董。

(1B) 第(1)(b)款不適用於根據第 40AM 條獲提名註冊為家長校董及替代家長校董的校董，亦不適用於根據第 40AN 條獲提名註冊為校友校董而為此選出的校董。” 。”。

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47 刪去該條而代以—

“47. 課程綱要及時間表須經常任秘書長批准

第 92 條現予修訂—

- (a) 在第(8)款中，廢除“校監及”；
- (b) 加入—

“ (8A) 常任秘書長在決定根據第(8)款就某授課課程綱要或任何其他文件給予書面指示時，須考慮下列事宜：

- (a) 一個合理的人不會接受的不雅、淫褻或低劣品味的材料；
- (b) 可能導致任何人士或羣體基於民族、國籍、種族、性別、性取向、宗教、年齡、社會地位、身體或心智不健全等原因，而遭人憎恨或畏懼或受到污蔑或侮辱的材料；或
- (c) 任何違法的事物。”。

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刪去建議的第 40BJ 條而代以 □□

“40BJ. 為就現有學校設立法團校董會而作出呈遞

(1) 本條適用於 □□

(a) 符合以下描述的資助學校 □□

(i) 屬不設法團校董會學校；及

(ii) 在 2005 年 1 月 1 日前已開始營辦；

(b) 屬直資學校並已就其根據第 40BH 條發出通知的學校；及

(c) 屬指明學校並已就其根據第 40BH 條發出通知的學校。

(2) 學校的辦學團體須向常任秘書長呈遞建議的法團校董會的章程的草稿。

(3) 根據第(2)款作出的呈遞須 □□

(a) (如屬資助學校)在 2009 年 1 月 1 日前提出；

(b) (如屬直資學校或指明學校)在就該校根據第 40BH 條發出的通知的日期的 6 個月內提出。

(4) 凡常任秘書長為令他能夠行使他在第 40BK 或 40BL 條下的權力而合理地要求關乎該項呈遞的進一步資料，辦學團體須向他提供該等資料。

(5) 立法會可在 2008 年 1 月 1 日後的任何時間藉決議修訂第(3)(a)款，以延長就資助學校根據第(2)款作出的呈遞的限期。”。

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8 刪去(b)段而代以一

“(b) 在(e)段中，廢除“校董會在管理學校方面並不令人滿意，或並無以適當方式促進學生教育；”而代以“該學校的管理出現嚴重問題或危機，令校政混亂和學校不能正常運作；”。

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新條文 加入一

“13A. 取消校董註冊的理由

第 31(1)條現予修訂—

(a) 廢除(c)(ii)段而代以一

“(ii) 令某間學校的管理出現嚴重問題或危機，令校政混亂和學校不能正常運作；”；

(b) 在(e)(i)段中，廢除“其管理並不令人滿意；”而代以“其管理出現嚴重問題或危機，令校政混亂和學校不能正常運作；”；

(c) 廢除(e)(ii)段。”。

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18 刪去(a)段而代以—

“(a) 廢除第(1)款而代以—

“(1) 如常任秘書長覺得—

(a) 某間學校的管理出現嚴重問題或危機，令
校政混亂和學校不能正常運作；或

(b) 由於任何理由，某間學校並無校董，

他可委任不多於二人出任校董，任期按常任秘書長認為適當者而定。”。

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新條文 加入—

“28A. 常任秘書長指示作出補救措施的權力

第 82 條現予修訂，廢除第(1)款而代以—

“(1) 如常任秘書長覺得—

(a) 某間學校的管理出現嚴重問題或危機，令
校政混亂和學校不能正常運作；或

(b) 就該學校而言，有人正在違反或已違反本
條例的任何條文，

則常任秘書長可藉書面通知發出他認為需要的指示，
使該學校的營辦回復正常運作，或使本條例內關於該
學校的有關係文得以遵守。”。

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30 刪去該條而代以—

“第 83 條第(1)款現予修訂，廢除(b)段而代以—

“(b) 任何學校的校董、教員或學生的行為現時或一向令該校的管理出現嚴重問題或危機，令校政混亂和學校不能正常運作；或”。“”。