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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 27 OF 2004**L.S.

TUNG Chee-hwa
Chief Executive
22 July 2004

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

[1 January 2005]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Education (Amendment) Ordinance 2004.

(2) This Ordinance shall come into operation on 1 January 2005.

Education Ordinance**2. Interpretation**

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

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

(b) in subsection (1)—

(i) by repealing the definition of “management committee” and substituting—

““management committee” (校董會), in relation to a school without IMC, means the managers of the school;”;

- (ii) by repealing the definition of “manager” and substituting—
 - ““manager” (校董), in relation to a school—
 - (a) means a person who is registered as a manager of the school under section 29 or under either of the repealed Ordinances; and
 - (b) subject to sections 40AL and 40AS, includes an alternate manager within the meaning of section 40AB;”;
- (iii) by repealing the definition of “registered manager”;
- (iv) by repealing the definition of “sponsoring body” and substituting—
 - ““sponsoring body” (辦學團體), in relation to a school, means a society, organization or body (whether incorporated or not) which is approved in writing by the Permanent Secretary to be the sponsoring body of the school;”;
- (v) 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 - (i) approved as the supervisor of the school under section 34 or 38(2) or under either of the repealed Ordinances; or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 40AJ(2) as the supervisor of the school; or
 - (ii) appointed or elected under section 40AJ(3) as the acting supervisor of the school.”;
- (vi) by adding—
 - ““IMC school” (設有法團校董會學校) means a school in respect of which an incorporated management committee is established under Part IIIB;
 - “incorporated management committee” (法團校董會), in relation to a school, means the incorporated management committee established under section 40BN or 40BX in respect of the school;

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

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

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

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

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

(c) by adding—

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

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

3. Permanent Secretary to maintain registers

Section 8 is amended—

(a) in subsection (1)—

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

(ii) by adding—

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

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

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

(b) by adding—

“(3) The entries referred to in subsection (1)(da)(i) and (ii) shall be made available in such manner as the Permanent Secretary thinks fit for public inspection to—

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

(b) ensure transparency and accountability of the incorporated management committee.”.

4. Exemption of schools from Ordinance

Section 9 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”.

5. Grounds for refusal to register school

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

6. Certificate of registration or provisional registration

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

7. Approval of Permanent Secretary required for post secondary education

Section 18A is amended—

- (a) in subsection (1), by repealing “he” and substituting “it”;
- (b) in subsection (2), by repealing “A supervisor” and substituting “The supervisor of a school without IMC”;
- (c) by adding—

“(3) If an incorporated management committee contravenes subsection (1) 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.”.

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

Section 22(1) is amended—

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

9. Part heading amended

The heading to Part III is amended by adding “REGISTRATION OF” before “MANAGERS”.

10. Subheading repealed

The subheading “Registration of managers of schools” before section 27 is repealed.

11. Grounds for refusal to register manager

Section 30 is amended—

- (a) in subsection (1)—
 - (i) by repealing paragraph (d);
 - (ii) in paragraph (e), by repealing “; or” at the end and substituting a full stop;
 - (iii) by repealing paragraph (f);
- (b) by adding—
 - “(1A) The Permanent Secretary may refuse to register an applicant as a manager of—
 - (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 40BK or 40BU if the applicant has been registered as a manager of 5 or more schools.”;
- (c) in subsection (2), by repealing everything after “applicant as a manager of” and substituting—
- “—
- (a) a school without IMC if it appears to the Permanent Secretary that the applicant is not acceptable as a manager of the school to the majority of the managers; or
 - (b) an IMC school if—
 - (i) the applicant is on a list of proposed managers which the Permanent Secretary refuses to approve under section 40BM or 40BW; or
 - (ii) subject to any exemption granted under section 40AR, the registration of the applicant as a manager of the school will render the composition of the incorporated management committee of the school inconsistent with the constitution of the committee.”.

12. Grounds for cancellation of registration of manager

Section 31 is amended—

(a) in subsection (1)—

(i) in paragraph (b), by repealing “30(1)(a) to (e)” and substituting “30(1) or (1A)”;

(ii) in paragraph (e)(iii), by repealing “; or” and substituting a semicolon;

(iii) by repealing paragraph (f);

(iv) by adding—

“(g) (where the school is an IMC school) if the Permanent Secretary receives a notice in writing from the incorporated management committee of the school that—

(i) the manager has been absent without the consent of the committee from all meetings of the committee in a school year; and

(ii) the manager has been given due notice to attend those meetings;

(h) if the manager fails to produce, upon request by the Permanent Secretary, a medical certificate issued by a registered medical practitioner after the date of such request certifying that the manager is physically fit to perform the functions of a manager;

(i) if he receives a notice under section 40AX as regards the manager; or

(j) if the manager contravenes section 40BF.”;

(b) in subsection (2)—

(i) by repealing paragraph (a);

(ii) by adding—

“(aa) if he receives a notice under section 39(2)(a) or 40AK(1)(b)(i) in respect of the manager;

(ab) if he receives a notice under section 40AW as regards the manager; or”.

(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.”.

13. Heading substituted

The subheading “**Management committees**” before section 32 is repealed and the following substituted—

“PART IIIA

MANAGEMENT OF SCHOOLS WITHOUT INCORPORATED
MANAGEMENT COMMITTEE”.

14. Section added

The following is added before section 32—

“31A. Application of Part IIIA

This Part applies to a school without IMC.”.

15. Subheading repealed

The subheading “**Supervisors**” before section 34 is repealed.

16. Part IIIB added

The following are added after section 40—

“PART IIIB

MANAGEMENT OF IMC SCHOOLS

General provisions

40AA. Application of certain provisions of this Part

Sections 40AD to 40BI apply to IMC schools only.

40AB. Interpretation of Part IIIB

In this Part, unless the context otherwise requires—
“alternate manager” (替代校董) means an alternate parent manager, alternate sponsoring body manager or alternate teacher manager;
“alternate parent manager” (替代家長校董) means a manager who is nominated under section 40AO for registration as such;
“alternate sponsoring body manager” (替代辦學團體校董) means a manager who is nominated for registration as such under section 40AM;

- “alternate teacher manager” (替代教員校董) means a manager who is elected under section 40AN for registration as such;
- “alumnus” (校友), in relation to a school, means a person who has been a pupil of the school but is no longer such a pupil;
- “alumni manager” (校友校董) means a manager who is nominated for registration as such under section 40AP;
- “bi-sessional school” (上下午班制學校) means a school the registration of which under this Ordinance covers an A.M. session and a P.M. session using the same school premises;
- “independent manager” (獨立校董) means a manager who is nominated for registration as such under section 40AQ;
- “parent” (家長), in relation to a pupil, 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;
- “parent manager” (家長校董) means a manager who is nominated for registration as such under section 40AO;
- “recognized alumni association” (認可校友會), in relation to a school, means an association recognized under section 40AP(1);
- “recognized parent-teacher association” (認可家長教師會), in relation to a school, means a parent-teacher association recognized under section 40AO(1);
- “scheduled opening date” (預計開課日期), in relation to a school, means the scheduled date on which the school commences operation as agreed between the sponsoring body and the Permanent Secretary;
- “specialist staff” (專責人員), in relation to a special school, means—
- (a) any person employed to work for the school as a school social worker, speech therapist, physiotherapist, occupational therapist, occupational therapist assistant, educational psychologist, nurse, warden, assistant warden, houseparent-in-charge, houseparent, programme worker or braille staff; and
 - (b) any other person employed to work in the school as may be specified by the Permanent Secretary in the code of aid for special schools for the purposes of this definition;
- “specified school” (指明學校) means a school specified in Schedule 3;
- “sponsoring body manager” (辦學團體校董) means a manager who is nominated for registration as such under section 40AM;
- “teacher” (教員) means 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;
- “teacher manager” (教員校董) means a manager who is nominated for registration as such under section 40AN.

40AC. 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.

40AD. Incorporated management committee to manage school

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

40AE. Functions of sponsoring body and incorporated management committee

- (1) The sponsoring body of a school shall be responsible for—
 - (a) meeting the cost of furnishing and equipping the new school premises of the school to, where applicable, standards as recommended by the Permanent Secretary;
 - (b) setting the vision and mission for the school;
 - (c) maintaining full control of the use of funds and assets owned by it;
 - (d) deciding the mode of receiving government aid;
 - (e) ensuring, through the sponsoring body managers, that the mission is carried out;

- (f) giving general directions to the incorporated management committee in the formulation of education policies of the school;
- (g) overseeing the performance of the incorporated management committee; and
- (h) drafting the constitution of the incorporated management committee.

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

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

40AF. Powers of incorporated management committee

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

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

- (a) take on lease, purchase or otherwise acquire, and hold, manage and enjoy property of any description, and sell, let or otherwise dispose of the same;
- (b) subject to section 40AG, employ such teaching staff and non-teaching staff as it thinks fit and determine the terms and conditions of service of such staff;
- (c) engage the service of such professionals or other persons as it thinks fit and determine their remuneration;
- (d) use and dispose of the funds and assets owned by it;
- (e) handle funds and assets received from the Government in the capacity of a trustee;

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

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

- (a) the provisions of this Ordinance or any other law;
- (b) 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;
- (c) (in the case of an aided school) the relevant code of aid;
- (d) (in the case of a DSS school) the terms and conditions upon which the school joined the Direct Subsidy Scheme administered by the Permanent Secretary; and
- (e) (in the case of a non-aided school in receipt of Government subsidies) the terms and conditions for receiving subsidies from the Government (if applicable).

(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.

40AG. 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).

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

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

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

**40AI. Irregular establishment, etc.
do not affect contract**

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

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

Supervisor**40AJ. 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.
- (3) 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.
- (4) The principal or a teacher of the school shall not be the supervisor or act as the supervisor.
- (5) The incorporated management committee shall give notice in writing of the assumption of office—
 - (a) of the first supervisor to the Permanent Secretary within 14 days after its establishment; and
 - (b) of any subsequent supervisor to the Permanent Secretary within 14 days after his election or appointment.

(6) A notice given under subsection (5) shall contain the English and Chinese names of the supervisor and such other information as the Permanent Secretary may specify.

40AK. Functions of supervisor

- (1) The supervisor of a school shall—
 - (a) preside over the meetings of the incorporated management committee of the school;
 - (b) within one month from the happening of any of the following events, give notice of the event to the Permanent Secretary—
 - (i) any person ceases to be a manager of the school;
 - (ii) the principal of the school ceases to hold office as such;
 - (iii) any teacher of the school is employed to teach or commences teaching at the school;
 - (iv) any teacher of the school ceases to hold office as such; or
 - (v) there is a change in any particulars furnished under this Ordinance in respect of the tenancy of the school premises;
 - (c) sign the statement of accounts of the committee;
 - (d) within one month of—
 - (i) the receipt or issue of a writ or other originating process (except one issued in proceedings in the Small Claims Tribunal within the meaning of the Small Claims Tribunal Ordinance (Cap. 338) and the Minor Employment Claims Adjudication Board within the meaning of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453)) by the committee; or
 - (ii) the handing down of the judgment in the proceedings to which such writ or originating process relates, give notice in writing of the event to the Permanent Secretary; and
 - (e) perform such functions as may be provided for in the constitution of the committee.
- (2) A notice given under subsection (1)(b) in respect of an event shall—
 - (a) be in writing;
 - (b) specify the date of the event; and
 - (c) specify the name and address of the person to whom the notice relates and, if he is a registered or permitted teacher, his registration number or permitted teacher reference number.

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

Composition of incorporated management committee and office of managers

40AL. 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).

40AM. Nomination of sponsoring body manager

The sponsoring body of a school may 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.

40AN. 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.

40AO. Nomination of parent manager

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

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

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

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

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

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

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

- (a) must be 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.

40AP. Nomination of alumni manager

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

(2) Notwithstanding subsection (1), the incorporated management committee or sponsoring body of a bi-sessional school, as may be provided for in the constitution of the committee may recognize—

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

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

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

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

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

In this subsection, a reference to school includes a reference to the A.M. session or P.M. session of a bi-sessional school.

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

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

(6) A person nominated under subsection (4) or (5)—

- (a) must be an alumnus of the school; and
- (b) must not be a teacher of the school.

40AQ. Nomination of independent manager

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

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

- (a) a teacher or (where applicable) specialist staff of the school;
- (b) a parent of a current pupil of the school;
- (c) an alumnus of the school; or
- (d) a person who is—
 - (i) a member;
 - (ii) the spouse or a grand-parent, parent, brother, sister, child or grand-child of a member; or
 - (iii) an employee, of the governing body (however described) of the sponsoring body of the school.

40AR. Exemption from composition requirements

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

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

(a) the first teacher manager of the school shall be nominated for registration as such at any time within one year from the establishment of the committee; and

(b) the first parent manager of a school shall be nominated for registration as such at any time within 3 years from the establishment of the committee.

(3) If the incorporated management committee of a school is established under section 40BN, 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.

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

(5) An application under subsection (4) shall be made in such manner as the Permanent Secretary may specify.

(6) The Permanent Secretary shall decide an application under subsection (4) 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.

(7) If—

(a) an application under this section is pending; or

(b) an exemption has been granted under this section,

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

40AS. Provisions applicable to alternate managers

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

(2) An alternate 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.

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

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

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

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

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

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

(5) In ascertaining the majority of the managers of a school for the purposes of section 56(1)(d) or 57(1)(d)—

(a) 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;

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

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

(6) For the purposes of establishing a quorum of a meeting of incorporated management committee—

(a) 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;

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

(7) An alternate manager shall not only because of his being a manager incur any liability for an act done pursuant to a voting of the incorporated management committee in which he has not participated by virtue of subsection (2), (3) or (4).

(8) 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.

(9) 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.

(10) In subsections (4) and (6), a reference to school includes a reference to the A.M. session or P.M. session of a bi-sessional school.

40AT. 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 40BM(1)(a) or 40BW(1)(a)) endorsed by the sponsoring body in such manner as the Permanent Secretary may specify.

40AU. Filling of vacancies to maintain full composition

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

(2) The incorporated management committee shall, within three months from the date on which the failure to maintain full composition arises—

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

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

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

40AV. 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 40AQ(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.

40AW. Resignation, etc. of manager

(1) If a manager—

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

the committee shall give a written notice of the event to the Permanent Secretary.

(2) If—

- (a) the principal of a school ceases to be the principal; or
- (b) a teacher manager or alternate teacher manager of a school ceases to be employed in the school,

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

40AX. Vacation of office of managers

(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.

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

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

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

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

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

(7) 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.

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

Operation of incorporated management committee

40AY. Constitution of incorporated management committee

- (1) An incorporated management committee shall—

- (a) have a written constitution which is approved by the Permanent Secretary; and
 - (b) conduct its affairs in accordance with its constitution.
- (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.
- (4) 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.
- (5) Subject to section 66(1)(ba), an amendment objected to by the Permanent Secretary shall be void.
- (6) 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.
- (7) Subsections (3) and (4) do not apply to an amendment under subsection (6).
- (8) If an objection under subsection (4) 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.
- (9) The incorporated management committee shall, as soon as practicable after any amendment to its constitution takes effect, lodge a copy of its constitution as amended with the Permanent Secretary.

40AZ. Delegation of functions

(1) An incorporated management committee may, either generally or for a particular purpose, delegate any function conferred on it by this Ordinance (except section 40AE and regulation 76 of the Education Regulations (Cap. 279 sub. leg. A)) to any manager of the school.

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

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

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

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

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

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

40BA. Permanent Secretary's nominee may attend meeting

If it appears to the Permanent Secretary that the attendance of a 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.

40BB. Accounts of incorporated management committee

(1) An incorporated management committee shall—

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

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

- (ii) such instructions as may be given by the Permanent Secretary for the purposes of this paragraph from time to time;
 - (b) cause to be prepared for each accounting year of the committee statements of the accounts of the committee; and
 - (c) submit the statement of accounts to the Permanent Secretary at such time and in such manner as the Permanent Secretary may specify.
- (2) The statement of accounts mentioned in subsection (1) shall—
- (a) include an income and expenditure account and balance sheet; and
 - (b) be authenticated by the signatures of the supervisor of the school and one other manager authorized by the incorporated management committee of the school to act for that purpose, either generally or specifically.
- (3) An incorporated management committee shall appoint an accountant as the auditor.
- (4) The auditor appointed under subsection (3) shall—
- (a) audit the accounts prepared under subsection (1);
 - (b) report as to—
 - (i) whether such account and balance sheet present fairly the financial transactions of the incorporated management committee during the accounting year to which the account and balance sheet relate; and
 - (ii) the financial position of the incorporated management committee at the end of that year, subject to such qualification (if any) as he thinks fit;
 - (c) submit the report to the Permanent Secretary at such time as the Permanent Secretary may specify;
 - (d) be entitled to require such information and explanations as he considers necessary for discharging his duties; and
 - (e) comply with such directions as may be given by the Permanent Secretary for the purposes of this paragraph from time to time.
- (5) The incorporated management committee shall permit—
- (a) the Permanent Secretary;
 - (b) any inspector of schools; or
 - (c) the auditor appointed under subsection (3),
- to inspect the books of account and all vouchers, receipts, invoices, documents and records in the committee's control which are relevant to the financial transactions of the committee.

(6) In this section, “accountant” (會計師) means a certified public accountant (practising) as defined in the Professional Accountants Ordinance (Cap. 50).

40BC. Service of documents

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

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

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

- (a) located in the school premises; and
- (b) used in connection with giving instructions to the pupils of the school,

shall not be seized.

40BE. Dissolution

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

- (a) the incorporated management committee shall be dissolved;
- (b) the name of the committee shall be removed from the register of incorporated management committees; and
- (c) the properties owned by the committee immediately before its dissolution shall be vested in the 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.

Provisions relating to managers**40BF. Declaration of pecuniary or other personal interests annually**

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

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

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

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

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

40BG. Disclosure of pecuniary or other personal interests

(1) If—

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

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

(2) A disclosure under subsection (1) by a manager that—

- (a) he or any nominee of him is a member of a specified company or other body;
- (b) he is an officer or employee of a specified company or other body;

- (c) he is a partner or is in the employment of a specified person;
or
- (d) he has some other specified interest relating to a specified company or other body or to a specified person,

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

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

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

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

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

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

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

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

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

(8) A contravention of this section does not invalidate a decision of the incorporated management committee.

40BH. Register of interests

The incorporated management committee of a school shall—

- (a) keep a register of all declarations made under section 40BF;
- (b) keep a register of all disclosures made under section 40BG;
- (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 whether section 40BF or 40BG, 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.

40BI. Rights and liability of manager and protection

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

(2) A manager shall not incur any civil liability in respect of anything done or omitted to be done by him in good faith in the performance or purported performance of any function of his office as the manager.

(3) 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.

(4) The protection conferred under subsection (2) does not in any way affect the liability, if any, of the incorporated management committee for the act or omission of the manager in the performance or purported performance of the relevant function.

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

**40BJ. 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 in writing of its intention to establish an incorporated management committee in respect of the school.

**40BK. 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 40BJ; and

(c) a specified school in respect of which a notice has been
given under section 40BJ.

(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 July 2009;

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

(5) The Legislative Council may, by a resolution passed after 1 October 2008 but before 1 July 2009, amend subsection (3)(a) by repealing “1 July 2009” and substituting a date after 1 July 2009 but before 2 July 2011.

40BL. Approval of draft constitution

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

40BM. Approval of list of proposed managers

(1) Upon the approval of the draft constitution by the Permanent Secretary, 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 40BL; 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.

40BN. Incorporation

(1) If the Permanent Secretary approves—

- (a) a draft of a constitution under section 40BL; and
- (b) a list of proposed managers under section 40BM,

he shall—

- (c) register the proposed managers as managers of the school under section 29; and
- (d) issue a certificate of incorporation in such form as he may specify.

(2) With effect from the date of incorporation specified in the certificate of incorporation—

- (a) the supervisor of the school shall cease to be the supervisor of the school;
- (b) all managers of the school who hold office as such immediately before that date shall cease to be managers of the school; and
- (c) the incorporated management committee shall be established as a body corporate with perpetual succession.

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

- (a) have—
 - (i) an English name in the form “The Incorporated Management Committee of (*the registered English name of the school*)”; and
 - (ii) a Chinese name in the form “(*the registered Chinese name of the school*) 法團校董會”;
- (b) be capable of suing and being sued in its name and, subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer;
- (c) have a common seal, the affixing of which shall be pursuant to its resolution and be authenticated by the signatures of the supervisor of the school and one other manager authorized by the committee to act for that purpose, either generally or specifically; and
- (d) have a registered office at the address of the premises which are specified in the certificate of registration or certificate of provisional registration of the school.

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

40BO. Effect of certificate of incorporation

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

40BP. Transitional provisions for establishment of incorporated management committee

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

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

40BQ. Dissolution of school management company

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

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

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

(4) This section has effect notwithstanding—

(a) any provision in the memorandum and articles of association of the school management company governing its winding up or dissolution; and

(b) the provisions of any other Ordinance.

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

40BR. Transitional provisions for dissolution of school management company

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

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

40BS. Failure to establish incorporated management committee

(1) If—

(a) the sponsoring body of an aided school fails to comply with section 40BK; or

(b) the Permanent Secretary refuses to issue a certificate of incorporation under section 40BN in respect of the school,

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.

(2) 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 purpose of this Ordinance be treated as a manager appointed under section 41.
- (3) The Government shall not incur any civil liability only by reason of the exercise by the Permanent Secretary of his power under subsection (1).

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

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

The sponsoring body of a DSS school the scheduled opening date of which falls on or after 1 January 2005 may notify the Permanent Secretary in writing of its intention to establish an incorporated management committee in respect of the school.

**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 40BT.
- (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.
- (3) A submission made under subsection (2) shall be made—
 - (a) not later than 6 months before the scheduled opening date; or
 - (b) by such later date as the Permanent Secretary may approve in writing.
- (4) The sponsoring body shall provide to the Permanent Secretary such further information relating to the submission as he may reasonably require for the purposes of enabling him to exercise his power under section 40BV or 40BW.

40BV. Approval of draft constitution

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

40BW. Approval of list of proposed managers

(1) Upon the approval of the draft constitution by the Permanent Secretary, 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.

40BX. Incorporation

(1) If the Permanent Secretary—

- (a) approves a draft of a constitution under section 40BV;
- (b) approves a list of proposed managers under section 40BW; and
- (c) registers the school under section 13 or 15,

he shall—

- (d) register the proposed managers as managers of the school under section 29; and
- (e) issue a certificate of incorporation in such form as he may specify.

(2) With effect from the date of incorporation specified in the certificate of incorporation, the incorporated management committee shall be established as a body corporate with perpetual succession.

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

- (a) have—

- (i) an English name in the form “The Incorporated Management Committee of (*the registered English name of the school*)”; and
 - (ii) a Chinese name in the form “(*the registered Chinese name of the school*) 法團校董會”;
- (b) be capable of suing and being sued in its name and, subject to this Ordinance, of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer;
 - (c) have a common seal, the affixing of which shall be pursuant to its resolution and be authenticated by the signatures of the supervisor of the school and one other manager authorized by the committee to act for that purpose, either generally or specifically; and
 - (d) have a registered office at the address of the premises which are specified in the certificate of registration or certificate of provisional registration of the school.

40BY. Effect of certificate of incorporation

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

40BZ. Failure to establish incorporated management committee

- (1) If—
 - (a) the scheduled opening date of an aided school falls on or after 1 January 2005 and the sponsoring body of the school fails to comply with section 40BU; or
 - (b) the Permanent Secretary refuses to issue a certificate of incorporation under section 40BX in respect of the school,any agreement between the Government and the sponsoring body in relation to the sponsorship, subsidization, management and operation of the school shall, at the option of the Permanent Secretary, terminate on a day specified by him.
- (2) The Government shall not incur any civil liability only by reason of the exercise by the Permanent Secretary of his option under subsection (1).

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.
- (3) 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.”.

17. Heading substituted

The subheading “**Appointed managers**” before section 41 is repealed and the following substituted—

“PART IIIC

PERMANENT SECRETARY MAY APPOINT
MANAGERS”.

18. Appointment of managers by Permanent Secretary

Section 41(3) is amended by adding “or incorporated management committee (as may be appropriate)” before “in respect”.

19. Approval of first principal of school

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

20. Grounds for withdrawal of approval of principal

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

21. Approval of subsequent principals

Section 57(1) is amended—

- (a) in paragraph (d), by repealing “management committee” and substituting “managers of the school”;
- (b) by adding “or incorporated management committee (as may be appropriate) of the school” before “shall”.

22. Section added

The following is added—

“57A. 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 40AG(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.”.

23. Functions of principal

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

24. Performance of functions of principal by candidate

Section 58AA(2) is amended by adding “40AL(2)(b),” after “sections”.

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

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

26. Permanent Secretary to serve notice of decision on person adversely affected

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

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

“Section 40AY.	Incorporated management committee.
Section 40BL.	Sponsoring body.
Section 40BM.	Sponsoring body.
Section 40BS(1)(c).	Sponsoring body.
Section 40BS(1)(d).	Manager concerned.
Section 40BV.	Sponsoring body.
Section 40BW.	Sponsoring body.
Section 40BZ.	Sponsoring body.”.

27. 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 40AY(4);”.

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

Section 72A is amended—

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

29. Power of Permanent Secretary to order attendance at primary school or secondary school

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

30. Power of Permanent Secretary to direct remedial measures

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

31. Powers of Permanent Secretary to close school or give directions in cases of danger or misconduct

Section 83 is amended—

- (a) in subsection (1), by repealing “any manager” and substituting “the management authority”;
- (b) by adding after subsection (1)—
 - “(1AA) If it appears to the Permanent Secretary that the circumstances mentioned in subsection (1)(a) or (c) exist and the Permanent Secretary serves an order under subsection (1) accordingly, he shall serve a copy of the order on each manager of the school.”.

32. Regulations

Section 84 is amended—

- (a) in subsection (1)—
 - (i) by adding—
 - “(la) the establishment of parent-teacher associations;
 - (lb) the recognition of alumni associations for the purposes of section 40AP;”;
 - (ii) in paragraph (p), by adding “and incorporated management committees” after “committees”;

- (iii) by adding—
 - “(pa) approval of constitutions of incorporated management committees;”;
- (iv) in paragraphs (u) and (v), by repealing “supervisors” and substituting “management authorities”;
- (b) by repealing subsection (4) and substituting—
 - “(4) The 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.”.

33. Offences and penalties

Section 87 is amended—

- (a) by adding before subsection (1)—
 - “(1A) Without prejudice to the prosecution of any other person, an incorporated management committee is not to be held liable for any offence under this Ordinance.”;
- (b) in subsection (1)—
 - (i) in paragraph (a), by repealing “or a manager of”;
 - (ii) by adding—
 - “(aa) manages or takes any part in the management of a school which is not registered or provisionally registered;”;
 - (iii) in paragraph (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”;
- (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”;

(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.”.

34. Schedules added

The following are added—

“SCHEDULE 1

[s. 40BP]

1. Interpretation

In this Schedule—

“transferee” (受讓方) means the incorporated management committee of the relevant school;
“transition date” (交接日) means the date on which the incorporated management committee of the relevant school is established.

2. Pre-incorporation contract

Where—

- (a) any person enters into a contract with another party for the supply of goods or service for the benefit of a school before the transition date;
- (b) he enters into the contract with the written authority of the management committee or school sponsoring body of the school;
- (c) before he enters into the contract he advises the other party that the incorporated management committee of the school will on the commencement of the transition date become a party to the contract by virtue of this section; and

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

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

3. Continuance of 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, 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.

4. Continuance of employment

(1) Without limiting section 2, a person who is employed to work for a school immediately before the date of the establishment of the incorporated management committee of the school under section 40BN of this Ordinance shall on the commencement of that date be deemed to have been employed by the committee on the same terms and conditions of the employment subsisting immediately before that date.

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

(3) The—

(a) employment may be terminated; or

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

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

5. Delivery of books, etc.

(1) On the transition date, the transferee becomes the owner of all books, accounts, receipts or other document (however compiled, recorded or stored) that are relevant to the functions and powers of the transferee.

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

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

SCHEDULE 2

[ss. 40BR & 40CB]

1. Interpretation

In this Schedule—

(a) where this Schedule applies under section 40BR—

(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 committee of the relevant school;

(ii) “transferee” means the school management company of the relevant school;

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

2. Vesting of properties, etc.

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

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

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

(4) The vesting in the transferee of any properties, rights, obligations and liabilities under subsection (1) does not constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of such properties, rights, obligations and liabilities for the purposes of any instrument concerning or affecting such properties, rights, obligations and liabilities.

- (5) A provision contained in any deed, contract or other document made by the transferor—
- (a) prohibiting or requiring any consent or approval for the vesting effected by subsection (1); or
 - (b) to the effect that a default shall occur or be deemed to occur, or any right or obligation shall cease, as a result of the vesting effected by subsection (1),
- is deemed to have been waived.
- (6) The vesting in the transferee of an interest in land effected by subsection (1) does not—
- (a) operate as a breach of covenant or condition against alienation;
 - (b) give rise to any right of pre-emption, right of forfeiture, right of re-entry, option, damages or other right of action affecting land;
 - (c) invalidate or discharge any contract or security;
 - (d) operate so as to merge any leasehold interest in the reversion expectant on it; or
 - (e) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.
- (7) The transferee shall register or cause to be registered in the Land Registry—
- (a) where this Schedule applies under section 40BR, a copy of the certificate of incorporation issued to it under section 40BN(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.

3. Continuance of employment

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

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

(3) The—

- (a) employment may be terminated; or
- (b) terms and conditions of the employment may be varied,

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

4. Validity of acts already commenced

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

(2) If anything is in the process of being done by, on behalf of or in relation to the transferor immediately before the transition date, it may be carried on or completed by, on behalf of or in relation to the transferee.

5. Continuance of pending civil proceedings

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

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

6. Evidence: books and documents

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

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

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

7. Effect of existing agreements, etc.

(1) This section applies to any agreement, arrangement or contract made or entered into or transaction effected by, on behalf of or in relation to the transferor before the transition date.

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

8. Record of property

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

9. Delivery of books, etc.

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

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

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

SCHEDULE 3

[ss. 40AB & 40AC]

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

School Name	School Address
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' Middle School	11 Pak Po Street, 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".

Education Regulations

35. Interpretation

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

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

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

36. Approval for roof playgrounds

Regulation 16 is amended by repealing “, verandah”.

37. Structural requirements

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

38. Pupils using roof playgrounds to be under supervision

Regulation 18 is amended by repealing “, verandah”.

39. 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”.

40. Limitation of activities on roof playgrounds

Regulation 20 is amended by repealing “, verandah”.

41. 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.”.

42. Notice requiring safety equipment against fire

Regulation 37 is amended—

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

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

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

43. Refreshment places

Regulation 47 is amended by repealing “shop” and substituting “tuckshop”.

44. Sanitary condition

Regulation 48(2) is repealed.

45. Fees other than inclusive fee prohibited

Regulation 61 is amended—

- (a) in paragraph (2), by repealing “A supervisor or manager” and substituting “A management authority”;
- (b) by adding—
 - “(3) The Permanent Secretary may grant an approval under this regulation on his own motion or upon an application.”.

46. Formal receipts

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

47. 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.”.

48. Part amended

Part XII is amended by repealing—
“PART XII

SCHOOL MANAGEMENT COMMITTEES AND SUPERVISORS”
and substituting—

“PART XIA

CONSTITUTION OF MANAGEMENT COMMITTEES AND
INCORPORATED MANAGEMENT COMMITTEES”.

49. Constitution of school management committees

Regulation 75(1) is amended by repealing “, require the managers of any” and substituting “of a school without IMC, require the managers of the”.

50. Regulation added

The following is added—

“75A. Constitution of incorporated management committee

(1) In considering the draft constitution of a proposed incorporated management committee under section 40BL or 40BV of the Ordinance, the Permanent Secretary shall not approve the draft unless he is satisfied that operation of the committee in accordance with the constitution is likely to be satisfactory.

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

- (a) the number of each category of managers in the composition of the committee;
- (b) the procedures for nominating or electing persons for registration as managers;
- (c) the procedures for making a request and issuing a notice under section 40AX of the Ordinance as regards the cancellation of the registration of any manager;
- (d) the appointment or election of a manager to be or to act as the supervisor of the school and the secretary and treasurer of the committee;
- (e) the functions of the supervisor of the school and the secretary and treasurer of the committee;
- (f) the tenure of office of the managers;
- (g) the procedures for the selection of the principal;
- (h) the filling of vacancies in managers;
- (i) matters relating to the re-nomination or re-election of managers;
- (j) the appointment of auditor;
- (k) meetings and proceedings of the committee; or
- (l) the procedures for amending the constitution.

(3) The provisions of this regulation are made for the purposes of sections 40BL and 40BV of the Ordinance.”.

51. Part heading added

The following is added before regulation 76—

“PART XII

APPOINTMENT OF TEACHERS”.

52. 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).”.

53. Permanent Secretary may disapprove

Regulation 81 is amended by repealing 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”.

54. List of holidays to be posted

Regulation 83 is amended—

(a) in paragraph (1), by adding “without IMC” after “school”;

(b) in paragraph (3), by adding “, where the school is a school without IMC,” after “and”.

55. 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.”.

56. Size of classes

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

57. Hours of instruction

Regulation 89 is repealed.

58. Syllabus and time-table subject to approval of Permanent Secretary

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

59. 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.”.

60. Non-resident pupils

Regulation 95 is repealed.

61. Expulsion and suspension of pupils

Regulation 96(1) is amended by repealing “supervisor and”.

62. 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).

63. Business or trading operation

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

64. Regulation added

The following is added—

“99B. Restriction on use of profits 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.”.

65. 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.”.

66. Penalties

Regulation 102(2) is amended by repealing everything before “by virtue” and substituting—

“(2) A person who is guilty of an offence under regulation 101(6) or (6AA)”.

67. Appeals to Appeals Board

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

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

Grant Schools Provident Fund Rules

68. Interpretation

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

Subsidized Schools Provident Fund Rules

69. Interpretation

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

**70. Substitution of “management authority”
for “supervisor”**

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

**71. Substitution of “responsible person”
for “supervisor”**

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

**72. Substitution of “manager” for
“registered manager”**

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

Societies Ordinance

**73. 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

[s. 70]

SUBSTITUTE “MANAGEMENT AUTHORITY” FOR “SUPERVISOR”

Education Ordinance (Cap. 279)

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

Education Regulations (Cap. 279 sub. leg.)

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

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

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

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

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

SCHEDULE 2

[s. 71]

SUBSTITUTE “RESPONSIBLE PERSON” FOR “SUPERVISOR”

Education Regulations (Cap. 279 sub. leg.)

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

SCHEDULE 3

[s. 72]

SUBSTITUTE “MANAGER” FOR “REGISTERED MANAGER”

Education Ordinance (Cap. 279)

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