# THE ENGLISH SCHOOLS FOUNDATION (AMENDMENT) ORDINANCE 2008

## **CONTENTS**

Section		Page
1.	Short title and commencement	A207
2.	Sections repealed	A207
3.	Sections renumbered	A207
4.	Interpretation	A209
5.	Cross-heading added	
	The Foundation	A213
6.	Incorporation of the English Schools Foundation	A213
7.	Section substituted	
	4. Objects and powers of Foundation	A215
8.	Cross-heading and sections added	
	Board of Governors	
	5. Establishment of Board of Governors	A217
	6. Composition of Board of Governors	A219
	7. Meetings, etc. of Board of Governors	A221
	8. Nominating Committee	A221
	9. Standing committees of the Board of Governors	A223
	Officers and staff of the Foundation	
	10. Officers of the Foundation	A223
	11. Chief Executive Officer	A225
	12. Advisory committees of the Chief Executive Officer	A225

Section		Page
	School Councils, School Principals and Parent Teacher Associations	
	13. Functions of School Councils	A227
	14. Composition, etc. of School Councils	A227
	15. School Principals	A229
	16. Parent Teacher Associations	A233
	Miscellaneous	
	17. Nomination, etc. as member to be on a personal basis	A233
9.	Dividends prohibited	A233
10.	Manager and supervisor of the Schools	A235
11.	Sections added	
	20. Appeals	A235
	21. Validation of acts of Foundation, Board of Governors, Nominating Committee or School Council	A237
	22. Immunity from civil liability	A237
12.	Committees generally	A237
13.	Regulations	A239
14.	Form of contract	A239
15.	Registration with Registrar of Companies	A241
16.	Section added	
	27. Transitional arrangements	A241
17.	Saving	A241
18.	Schedule added	
	Schedule Transitional arrangements	A241
19.	Regulations repealed	A253
20.	Saving	A253

## HONG KONG SPECIAL ADMINISTRATIVE REGION

Ordinance No. 5 of 2008



Henry TANG
Acting Chief Executive
19 March 2008

An Ordinance to amend The English Schools Foundation Ordinance to make changes to the governance structure of The English Schools Foundation established under that Ordinance and to the administration of the schools of The English Schools Foundation, and for related purposes.

[ ]

Enacted by the Legislative Council.

#### 1. Short title and commencement

- (1) This Ordinance may be cited as The English Schools Foundation (Amendment) Ordinance 2008.
- (2) This Ordinance shall come into operation on a day to be appointed by the Chairman of The English Schools Foundation by notice published in the Gazette.

## 2. Sections repealed

Sections 7, 9 and 11 of The English Schools Foundation Ordinance (Cap. 1117) ("the principal Ordinance") are repealed.

#### 3. Sections renumbered

- (1) Sections 5, 6, 8, 10, 12, 13 and 14 are amended by renumbering them as sections 18, 19, 23, 24, 25, 26 and 28 respectively.
- (2) In this Ordinance, a reference to a section of the principal Ordinance as renumbered is a reference to that section as renumbered in accordance with this section.

Ord. No. 5 of 2008

#### 4. Interpretation

- (1) Section 2(1) is amended by repealing everything after "requires—" and substituting—
  - ""advisory committee" (諮詢委員會) and "advisory committee of the Chief Executive Officer" (行政總裁的諮詢委員會) mean a committee established by the Chief Executive Officer under section 12;
    - "Board of Governors" (協會管理局) and "Board" (管理局) mean the board established under section 5(1);
    - "Chief Executive Officer" (行政總裁) means the person who is Chief Executive Officer for the purposes of section 11(1);
    - "Committee of Parents" (家長委員會) means the committee established by the Chief Executive Officer under section 12(1)(c);
    - "Committee of School Council Chairmen" (校董會主席委員會) means the committee established by the Chief Executive Officer under section 12(1)(*b*);
    - "Committee of Support Staff" (非教學人員委員會) means the committee established by the Chief Executive Officer under section 12(1)(e);
    - "Committee of Teaching Staff" (教學人員委員會) means the committee established by the Chief Executive Officer under section 12(1)(d);
    - "employee of the Foundation" (協會僱員) means any—
      - (a) member of staff of the Foundation; or
    - (b) Principal or member of staff of a school of the Foundation; "external member" (外界成員), in relation to the Board of Governors, means a person who is a member of the Board under section 6(1)(a), (b), (c), (d) or (h);
    - "Foundation" (協會) means The English Schools Foundation established and incorporated under section 3;
    - "independent member" (獨立成員), in relation to the Board of Governors, means a person who is a member of the Board under section 6(1)(h);
    - "Nominating Committee" (提名委員會) means the committee established under section 8(1);
    - "officer" (主管人員), in relation to the Foundation, means a person holding the office of Chairman, Vice-chairman or Treasurer of the Foundation as provided in section 10(1);
    - "parent" (家長), in relation to a student of a school of the Foundation, includes—
      - (a) a guardian of the student; and
      - (b) a person who is not the parent or guardian of the student but has the actual custody of the student;
    - "parent member" (家長成員), in relation to the Board of Governors, means a person who is a member of the Board under section 6(1)(b), (c) or (d);

- "Parent Teacher Association" (家長教師會) means an association established under section 16(1);
- "Permanent Secretary" (常任秘書長) means the Permanent Secretary for Education;
- "Principal" (校長), in relation to a school of the Foundation, means the principal of the school for the purposes of the Education Ordinance (Cap. 279);
- "school" (學校), in the context of a school within Hong Kong, has the same meaning as the expression "school providing nursery, kindergarten, primary or secondary education" has for the purposes of the Education Ordinance (Cap. 279), and the expressions "school that provides nursery education" (提供幼兒教育的學校), "school that provides kindergarten education" (提供幼稚園教育的學校), "school that provides primary education" (提供小學教育的學校) and "school that provides secondary education" (提供中學教育的學校), in the context of a school within Hong Kong, shall be construed accordingly;
- "School Council" (校董會) means a council established under section 13(1);
- "school of the Foundation" (協會學校) means a school that is owned, managed, administered or operated by the Foundation;
- "special school" (特殊學校), in the context of a school within Hong Kong, has the same meaning as in the Education Ordinance (Cap. 279); "staff" (職員)—
  - (a) in relation to a school of the Foundation, means the persons employed by the Foundation to carry out duties at the school, but does not include the Principal of the school; and
  - (b) in relation to the Foundation, means the persons employed by the Foundation other than as the Principal or staff of a school of the Foundation:
- "standing committee" (常務委員會), in relation to the Board of Governors, means a committee established by the Board of Governors under section 9:
- "students with special educational needs" (有特殊教育需要的學生) means students—
  - (a) with a significantly greater difficulty in learning than the majority of students of the same age; or
  - (b) with a disability which hinders them from making use of educational facilities of a kind provided in schools of the Foundation for students of the same age;
- "support staff" (非教學人員), in relation to a school of the Foundation, means the staff of the school other than the teaching staff;

- "teaching staff" (教學人員), in relation to a school of the Foundation, means the staff of the school who are employed as teachers at the school.".
- (2) Section 2(2) is repealed.
- (3) Section 2 is amended by adding—
  - "(3) A reference in this Ordinance to a school of the Foundation is, unless expressly provided otherwise, a reference to a school of the Foundation in Hong Kong.
  - (4) For the avoidance of doubt, a reference in this Ordinance to a school of the Foundation in Hong Kong that provides education at one or other of the levels mentioned in the definition of "school" in subsection (1), that is to say, that provides nursery, kindergarten, primary or secondary education—
    - (a) includes a reference to a school that provides education at that level and also at any other of those levels; and
    - (b) includes a reference to such a school that is a special school.".

## 5. Cross-heading added

The following is added immediately before section 3—

"The Foundation".

## 6. Incorporation of the English Schools Foundation

- (1) Section 3 is amended, in the English text, in the heading, by repealing "the" and substituting "The".
- (2) Section 3 is amended by renumbering the first sentence as section 3(1), the second sentence as section 3(2) and the third sentence as section 3(3).
- (3) Section 3(1) is amended by adding "in English and "英基學校協會" in Chinese" before the full stop.
  - (4) Section 3(2) is repealed and the following substituted—
    - "(2) The members of the Foundation shall be the persons who are for the time being the members of the Board of Governors.".
- (5) Section 3(3) is amended by repealing everything after "name and shall have" and substituting "a common seal.".

#### 7. Section substituted

Section 4 is repealed and the following substituted—

Ord. No. 5 of 2008

## "4. Objects and powers of Foundation

- (1) The objects of the Foundation are—
  - (a) to own, manage, administer and operate within Hong Kong or elsewhere schools offering, without regard to race or religion, a modern liberal education through the medium of the English language to boys and girls who are able to benefit from such an education; and
  - (b) to provide educational services generally, within Hong Kong or elsewhere, as a means of raising revenue for the Foundation.
- (2) The Foundation shall have full power, in the furtherance of its objects—
  - (a) to take by gift or otherwise purchase and hold, grant, demise, mortgage or otherwise dispose of real or personal estate; and
- (b) to borrow or raise money in such manner as it sees fit, and in addition shall have all other powers conferred by, under or by virtue of this Ordinance.
- (3) The Foundation may delegate to a body corporate that is controlled by the Foundation ("controlled body corporate") such matters in connection with its objects as it thinks fit including the ownership, management, administration or operation of any school or the provision of any educational service, and a reference in this Ordinance to the Foundation shall, unless the context requires otherwise, be construed as including a reference to any such controlled body corporate in so far as the controlled body corporate's activities are activities that are undertaken for the purpose of a delegation by the Foundation made under this subsection.
- (4) Without limiting the generality of subsection (3), a company incorporated under the Companies Ordinance (Cap. 32) whose articles of association provide that only persons who are members of the Board of Governors or of the Committee of School Council Chairmen are eligible to be members of the company shall for the purpose of that subsection be taken to be a controlled body corporate.
- (5) The Foundation may provide to a controlled body corporate such funds as it considers appropriate for use by the body corporate in carrying out activities that are undertaken for the purpose of a delegation by the Foundation made under this section.
- (6) Nothing in this section derogates from the Education Ordinance (Cap. 279).".

#### A217

## 8. Cross-heading and sections added

The following are added—

## "Board of Governors

#### 5. Establishment of Board of Governors

- (1) There shall be a Board of Governors which shall be the governing body of the Foundation and which shall administer the property and manage the affairs of the Foundation.
- (2) Without limiting the generality of subsection (1), the functions of the Board shall be—
  - (a) to establish, with the Chief Executive Officer, the strategic direction of the Foundation;
  - (b) to approve and keep under review a curriculum strategy for the schools of the Foundation as a whole;
  - (c) to be responsible for the quality and standards of education provided in the schools of the Foundation;
  - (d) to ensure effective communication between the Foundation and parents of students of, and staff of, the schools of the Foundation, and to that end to publish an annual report on the activities of the Foundation;
  - (e) to ensure that there are effective procedures for the recruitment, retention, management, development and support of all employees of the Foundation;
  - (f) to oversee the efficient use of the resources of the Foundation and approve an annual budget;
  - (g) to select the person to be appointed as Chief Executive Officer, and to appraise the performance of the Chief Executive Officer;
  - (h) to consider for approval the proposed appointment of any person as—
    - (i) a member of staff of the Foundation reporting directly to the Chief Executive Officer; or
    - (ii) the Principal of a school of the Foundation; and
  - (i) to keep under review this Ordinance and regulations made under it.
- (3) A resolution of the Board shall, in accordance with its terms, be regarded as binding on any School Council, school of the Foundation, standing committee of the Board or committee established under section 23(1).
- (4) The Board shall provide for the custody of the common seal of the Foundation.

Ord. No. 5 of 2008

#### **Composition of Board of Governors 6.**

- (1) The Board of Governors shall comprise the following members—
  - (a) 3 persons elected by the Chairmen of the School Councils from among their own number;
  - (b) 6 persons elected by the parents of students of schools of the Foundation that provide primary or secondary education from among their own number;
  - one person elected by the parents of students of schools of the Foundation that provide primary or secondary education from among the parents of students with special educational needs of schools of the Foundation;
  - (d) one person elected by the Committee of Parents from among the members of that Committee;
  - one person elected by the Principals of the schools of the Foundation from among their own number;
  - (f) 2 persons, one of whom is a teacher of primary level students and the other of secondary level students, elected by the Committee of Teaching Staff from among the members of that Committee;
  - (g) one person elected by the Committee of Support Staff from among the members of that Committee;
  - 10 persons who are not eligible for election under any other paragraph of this subsection, nominated by the Nominating Committee: and
  - (i) the Chief Executive Officer, ex officio.
- (2) A person who is an employee of the Foundation or is the spouse of such an employee is not eligible for nomination or election as a member of the Board under subsection (1)(a), (b), (c), (d) or (h).
- (3) A person who is a member of the Nominating Committee is not eligible for nomination as a member of the Board under subsection (1)(h).
  - (4) At least one member of the Board shall be an alumnus of—
    - (a) a present or former school of the Foundation; or
    - (b) a school that, before the commencement of The English Schools Foundation (Amendment) Ordinance 2008 (5 of 2008), was owned, managed, administered or operated by ESF Educational Services Limited, a company incorporated under the Companies Ordinance (Cap. 32).
- (5) The term of office of a member, other than an ex officio member, shall be 3 years.
- (6) A member is eligible for renomination or re-election at the expiry of his term as a member, but a person shall not serve as a member consecutively for more than 2 terms.

#### 7. Meetings, etc. of Board of Governors

- (1) There shall be a Chairman, a Vice-chairman and a Treasurer of the Board of Governors who are elected by the members of the Board from among the independent members of the Board.
- (2) If the person who is Chairman, Vice-chairman or Treasurer ceases to be an independent member of the Board that office thereby becomes vacant.
- (3) The Chief Executive Officer shall ensure that legal advice is available to the Board on matters of procedure of meetings of the Board.
- (4) The Chief Executive Officer shall not be eligible to vote in any matter to be decided by a vote of the members of the Board.
- (5) The Chief Executive Officer may nominate a representative to attend any meeting of the Board on his behalf.
- (6) For the purpose of any meeting of the Board, a quorum is present if—
  - (a) not less than one third of the Board's membership is present;
  - (b) the majority of the members present are external members;
  - (c) the members present include the Chairman, Vice-chairman or Treasurer of the Board; and
  - (d) the Chief Executive Officer or his representative is present.

## 8. Nominating Committee

- (1) There shall be a Nominating Committee whose function is to nominate persons to serve as members of the Board of Governors for the purposes of section 6(1)(h).
- (2) The Nominating Committee shall comprise the following members—
  - (a) 2 persons nominated by the Committee of School Council Chairmen from among the members of the Committee;
  - (b) 2 persons from the business sector, one of whom is nominated by The Hong Kong General Chamber of Commerce and the other by The British Chamber of Commerce in Hong Kong;
  - (c) one person who is active in the field of higher education nominated by one of the following higher education institutions, namely—
    - (i) the University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053);

- (ii) The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109); or
- (iii) The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444); and
- (d) one person nominated by the Committee of Parents from among the members of that Committee.
- (3) The higher education institutions mentioned in subsection (2)(c)shall act in rotation in nominating a person for the purposes of that paragraph.
- (4) In selecting persons for nomination as members of the Board, the Nominating Committee shall have regard to the desirability of having as wide a range of experience and expertise represented on the Board as is practicable.
- (5) In order to broaden the pool of candidates available for nomination as a member of the Board under section 6(1)(h), the Nominating Committee shall invite professional groups and business organizations to submit the names of persons who are eligible to be nominated as such a member.
- (6) Any decision of the Nominating Committee concerning nominations to the Board shall be final.

#### Standing committees of the Board of Governors 9.

The Board of Governors shall establish the following standing committees—

- (a) a committee to advise the Board on matters relating to the auditing of the conduct of the Foundation's business;
- (b) a committee to advise the Board on matters relating to the management of the finances of the Foundation;
- a committee to advise the Board on matters relating to the remuneration and terms and conditions of service of the staff of the Foundation.

## Officers and staff of the Foundation

#### 10. Officers of the Foundation

(1) The officers of the Foundation shall be a Chairman, Vicechairman and Treasurer.

- Ord. No. 5 of 2008
- (2) The offices of Chairman, Vice-chairman and Treasurer shall be honorary offices.
- (3) The persons who are for the time being the Chairman, Vicechairman and Treasurer of the Board of Governors shall be the Chairman, Vice-chairman and Treasurer of the Foundation respectively.

#### 11. Chief Executive Officer

- (1) The Foundation shall employ a person in the position of Chief Executive Officer to be the principal academic and administrative officer of the Foundation and head of the employees of the Foundation.
- (2) The appointment of any person as Chief Executive Officer shall be subject to the approval of the Board of Governors.
- (3) If for any reason the person who is Chief Executive Officer is unable to perform the duties of that office, the Board of Governors may appoint a person to act as Chief Executive Officer in his place and the person so appointed shall, while acting, have all the powers and duties of the Chief Executive Officer.

## 12. Advisory committees of the **Chief Executive Officer**

- (1) The Chief Executive Officer shall establish the following committees, namely—
  - (a) a committee whose members are drawn from the Principals of schools of the Foundation:
  - a committee whose members are drawn from the Chairmen of School Councils of schools of the Foundation;
  - a committee whose members are drawn from the parents of students of schools of the Foundation that provide primary or secondary education, other than such parents who are also employees of the Foundation;
  - (d) a committee whose members are drawn from the members of the teaching staff of schools of the Foundation that provide primary or secondary education; and
  - a committee whose members are drawn from the members of the support staff of schools of the Foundation that provide primary or secondary education.
- (2) It shall be the function of each committee to advise the Chief Executive Officer in relation to matters affecting the interests of the group of persons from whom the committee's members are drawn.

## School Councils, School Principals and Parent Teacher Associations

#### 13. Functions of School Councils

- (1) There shall be for each of the schools of the Foundation that provides primary or secondary education a School Council which shall have the regulation of matters relating to the provision of education within the school in accordance with the resolutions of the Board of Governors.
- (2) Without limiting the generality of subsection (1), the functions of the School Council of a school shall be—
  - (a) with the Chief Executive Officer, to design and implement a process for the selection of the Principal of the school;
  - (b) to establish, with the Principal, the strategic direction of the school within the framework set by the Board;
  - (c) to monitor the provision of education in the school to ensure that it meets the needs of the students;
  - (d) to approve a curriculum for the school that is in accordance with the curriculum strategy approved by the Board for the schools of the Foundation as a whole;
  - (e) to secure the efficient use of resources delegated to the school, and to approve the school's annual budget;
  - (f) to report to the Board, the Chief Executive Officer and parents of students of the school from time to time on the performance of the school;
  - (g) to consider for approval any proposal by the Principal of the school for the appointment of staff of the school who report directly to the Principal or the promotion of staff within the school;
  - (h) to ensure the implementation of effective procedures for the management, development and support of the staff of the school;
  - (i) together with the Chief Executive Officer, to appraise the performance of the Principal of the school;
  - (j) to advise the Chief Executive Officer and the Board on issues affecting the school; and
  - (k) to contribute to the strategic development of the Foundation.

### 14. Composition, etc. of School Councils

(1) The School Council of a school shall comprise the following members—

- (a) a Chairman, appointed by the Board, who is neither an employee of the Foundation nor the parent of a student of the school;
- (b) an equal number, being not less than 2 and not more than 4, of each of the following groups of persons—
  - (i) persons from the general community who are neither employees of the Foundation nor parents of students of the school, appointed by the Board;
  - (ii) persons elected by the members of the teaching staff of the school from among their own number; and
  - (iii) a group comprising—
    - (A) one person, who is not an employee of the Foundation, elected by the parent members of the committee of the Parent Teacher Association of the school from among their own number; and
    - (B) one or more persons, who are not employees of the Foundation, elected by the parents of students of the school from among their own number;
- (c) one person elected by the members of the support staff of the school from among their own number;
- (d) the Chief Executive Officer, ex officio; and
- (e) the Principal of the school, ex officio.
- (2) The Chairman of the School Council of a school shall, in consultation with the Board of Governors, determine the number that shall apply for the purposes of subsection (1)(b).
- (3) The term of office of a member, other than an ex officio member, shall be 3 years.
- (4) A member is eligible for reappointment or re-election at the expiry of his term as a member, but a person shall not serve as a member consecutively for more than 2 terms.
- (5) Neither the Chief Executive Officer nor the Principal of the school shall have a vote in any matter to be decided by a vote of the members of the School Council.
- (6) The Chief Executive Officer may nominate a representative to attend any meeting of a School Council on his behalf.

## 15. School Principals

- (1) The Principal of a school of the Foundation shall be the principal academic and administrative officer of the school and head of the staff of the school.
- (2) Without limiting the generality of subsection (1), the Principal of a school of the Foundation shall have the following powers and duties—

- (a) together with the School Council, to establish the strategic direction of the school within the framework set by the Board of Governors;
- (b) to be responsible for—
  - (i) the quality and standards of education provided; and
  - (ii) the welfare of and standards of behaviour observed by students.

within the school;

- (c) to advise the School Council on curriculum development;
- (d) to select and to recommend to the Foundation persons for appointment as members of staff of the school, having regard to any selection procedures determined by the Chief Executive Officer and to the staffing and budgetary framework approved by the School Council;
- (e) to manage the members of staff of the school and appraise their performance, and to be responsible for the development and welfare of the members of staff of the school;
- (f) to make efficient use of the school's resources, and to recommend an annual budget to the School Council;
- (g) to develop mutually supportive relationships with parents of students of the school and the wider community;
- (h) to manage the day-to-day operation of the school;
- (i) to contribute to the strategic development of the Foundation; and
- (*j*) to account to the School Council and the Chief Executive Officer for the performance of the school and the discharge of his duties.
- (3) The selection of a person for recommendation to the Permanent Secretary under section 53(1) or 57(1) of the Education Ordinance (Cap. 279) for approval as Principal of a school of the Foundation shall follow a process that takes account of the views of different groups within the school community and is determined by the Chief Executive Officer and the School Council of the school jointly.
- (4) The recommendation of the name of a person to the Permanent Secretary as provided in subsection (3) shall be subject to the approval of the Board of Governors.
- (5) Any recommendation by the Principal of a school under subsection (2)(d) in relation to the appointment of staff who will report directly to the Principal, or any promotion by the Principal of a school of teaching staff within the school, shall be subject to the approval of the School Council.

#### 16. Parent Teacher Associations

- (1) There shall be established for each of the schools of the Foundation that provides primary or secondary education a Parent Teacher Association comprising—
  - (a) the parents of each student of the school ("parent members");
  - (b) all members of the teaching staff of the school ("teaching staff members"); and
  - (c) the Principal of the school.
- (2) It shall be the function of the Parent Teacher Association of a school to promote co-operation between the parents of students of the school and members of the teaching staff of the school.
- (3) A parent of a student of a school who is also a member of the teaching staff of the school shall be regarded as a parent member and not as a teaching staff member of the Parent Teacher Association of the school.
- (4) A Parent Teacher Association may be constituted either as an unincorporated association or as a company limited by guarantee.

#### Miscellaneous

# 17. Nomination, etc. as member to be on a personal basis

A person who is nominated, elected or appointed from among a group of eligible persons to be a member of the Board of Governors, of any School Council or of any committee provided for under this Ordinance is nominated, elected or appointed on a personal basis and not as the delegate of the group of eligible persons."

## 9. Dividends prohibited

Section 18 as renumbered is amended—

- (a) by repealing "its members or to any of the staff or" and substituting "the officers or employees of the Foundation, any of the members of the Board of Governors or any of the";
- (b) by repealing everything after "except" and substituting—
  - (a) by way of prize, reward or special grant; or

(b) in the case of an employee of the Foundation, by way of a dividend or bonus payable under his contract of employment.".

## 10. Manager and supervisor of the Schools

Section 19 as renumbered is amended—

- (a) in the heading, by repealing "the Schools" and substituting "schools of the Foundation":
- (b) in subsection (1), by repealing "for Education".

#### 11. Sections added

The following are added—

## "20. Appeals

- (1) There shall be the following right of appeal to an Appeals Panel constituted under this section—
  - (a) an employee of the Foundation may appeal against any decision of the Foundation terminating his employment;
  - (b) the parent of a student of a school of the Foundation may appeal against any decision of the Foundation expelling the student from the school.
  - (2) An Appeals Panel shall comprise the following members—
    - (a) a Chairman and 2 other members nominated by the Board of Governors from among the independent members of the Board; and
    - (b) one member nominated as follows—
      - (i) in the case of an appeal by a member of the teaching staff of a school of the Foundation, nominated by the committee of the Association of Professional Teachers in English Schools Foundation Schools from among the members of the committee;
      - (ii) in the case of an appeal by a member of the support staff of a school of the Foundation, nominated by the committee of the Support Staff Association of the English Schools Foundation from among the members of the committee;
      - (iii) in the case of an appeal by a Principal of a school of the Foundation or a member of the staff of the Foundation, nominated by the Board of Governors from among the Chairmen of the School Councils; or

- (iv) in the case of an appeal by the parent of a student, nominated by the Board of Governors from among the parent members of the Board.
- (3) An Appeals Panel may determine its own procedure in performing its functions under this section.
- (4) Any decision of the Foundation appealed against under this section shall have effect in accordance with the terms of the decision of the Appeals Panel disposing of the appeal.

# 21. Validation of acts of Foundation, Board of Governors, Nominating Committee or School Council

No act or resolution of the Foundation, the Board of Governors, the Nominating Committee or a School Council shall be invalid by reason only of—

- (a) any vacancy in any office or membership of such body; or
- (b) any want of qualification by, or invalidity in the nomination, election or appointment of, any officer or member of any such body.

## 22. Immunity from civil liability

A person who is an officer or member of the Foundation or a member of the Board of Governors, the Nominating Committee, a standing committee of the Board of Governors, an advisory committee of the Chief Executive Officer, a School Council, a Parent Teacher Association, an Appeals Panel or any committee established under section 23(1) is not liable in civil proceedings for anything done or omitted to be done by him in good faith in the performance or purported performance of his duties as such officer or member.".

## 12. Committees generally

- (1) Section 23(1) as renumbered is amended by repealing "The Foundation, the Executive Committee" and substituting "The Board of Governors, the Chief Executive Officer".
- (2) Section 23(2) as renumbered is amended by repealing everything after "committee" and substituting "established under this section may consist partly of persons who are not members of the Board, staff of the Foundation or members of the School Council, as the case may be.".
  - (3) Section 23(3) as renumbered is amended—

- (a) by repealing "the Foundation, the Executive Committee" and substituting "the Board, the Chief Executive Officer";
- (b) by adding "established under this section" after "committee".

## 13. Regulations

- (1) Section 24(1) as renumbered is repealed and the following substituted—
  - "(1) The Foundation may, by resolution of the Board of Governors, make regulations—
    - (a) providing for the management, operation, administration and control of the Foundation and the schools of the Foundation and with regard to any ancillary matter;
    - (b) providing for any matter in relation to any board, council, committee, panel, association or other body established or provided for under this Ordinance, including but not limited to—
      - (i) the nomination, election or appointment of persons as members of the body;
      - (ii) membership of the body generally (including vacancies in the membership of the body and the removal from office of any member of the body);
      - (iii) any thing that is to be or may be done by the body in discharging its functions; and
      - (iv) procedures to be followed at meetings of the body; and
    - (c) generally, for the carrying into effect of this Ordinance.".
  - (2) Section 24(2) as renumbered is repealed.
  - (3) Section 24 as renumbered is amended by adding—
    - "(3) A resolution of the Board of Governors for the purposes of subsection (1) requires the approval of at least two thirds of the members of the Board eligible to vote on the resolution.".

#### 14. Form of contract

- (1) Section 25(1)(b) and (c) as renumbered is amended by repealing "Executive Committee" and substituting "Board of Governors".
- (2) Section 25(4) as renumbered is amended by repealing ", and counter-signed by the Secretary" and substituting "of the Foundation and countersigned by the Chief Executive Officer".

## 15. Registration with Registrar of Companies

- (1) Section 26(1) as renumbered is amended—
  - (a) in paragraph (a), by adding "and" at the end;
  - (b) by repealing paragraph (b);
  - (c) in paragraph (c), by repealing everything after "members of the" and substituting "Board of Governors and any change therein, certified as correct by the Chairman of the Foundation and the Chief Executive Officer.".
- (2) Section 26(2) as renumbered is amended by repealing "the making of the regulations or of any change or appointment" and substituting "any change or nomination or election".

#### 16. Section added

The following is added—

## **"27.** Transitional arrangements

The arrangements set out in the Schedule shall have effect.".

## 17. Saving

Section 28 as renumbered is amended by repealing "persons" and substituting "person".

#### 18. Schedule added

The following is added—

"SCHEDULE

[s. 27]

#### TRANSITIONAL ARRANGEMENTS

## **Interpretation**

1. In this Schedule, unless the context otherwise requires—

"amendment Ordinance of 2008" (《2008 年修訂條例》) means The English Schools Foundation (Amendment) Ordinance 2008 (5 of 2008);

"repealed Regulations" (《已廢除規例》) means Regulations made under this Ordinance and in effect immediately before the commencement of the amendment Ordinance of 2008.

## **Board of Governors**

- 2. As at the commencement of the amendment Ordinance of 2008—
  - (a) a person who immediately before that commencement was a member of the Executive Committee of the Foundation by virtue of a provision of regulation 5.3 of the repealed Regulations specified in column 2 of the table shall be deemed to be a member of the Board of Governors nominated or elected for the purposes of the provision of section 6(1) of this Ordinance specified in relation to that person in column 3 of the table; and
  - (b) the persons so deemed to be members of the Board by virtue of items 1, 2 and 3 of the table shall be deemed to be the Chairman, Vice-chairman and Treasurer of the Board respectively elected for the purposes of section 7(1) of this Ordinance—

#### **TABLE**

Item	Provision of regulation 5.3 of repealed Regulations	Provision of section 6(1) of this Ordinance
1.	Paragraph (i) (The Chairman of the Foundation)	Paragraph (h) (persons who are not eligible for nomination or election under any other paragraph of section 6(1) and are not the spouse of a person who is so eligible, nominated by the Nominating Committee)
2.	Paragraph (ii) (The Vice-chairman of the Foundation)	Paragraph (h) (persons who are not eligible for nomination or election under any other paragraph of section 6(1) and are not the spouse of a person who is so eligible, nominated by the Nominating Committee)

Item	Provision of regulation 5.3 of repealed Regulations	Provision of section 6(1) of this Ordinance
3.	Paragraph (iv) (The Treasurer of the Foundation)	Paragraph (h) (persons who are not eligible for nomination or election under any other paragraph of section 6(1) and are not the spouse of a person who is so eligible, nominated by the Nominating Committee)
4.	Paragraph (vi) (The Chairman of the Management Committee)	Paragraph (a) (persons elected by the Chairmen of the School Councils from among their own number)
5.	Paragraph (vii) (The Chairman of the Academic Committee)	Paragraph (e) (person elected by the Principals from among their own number)
6.	Paragraph (viii) (The Chairman of the Staff Council)	Paragraph (f) (person elected by the Committee of Teaching Staff from among the members of the Committee)
7.	Paragraph (ix) (The Chairman of the Joint Council of Parent Teacher Associations)	Paragraph (d) (person elected by the Committee of Parents from among the members of the Committee)

3. The term of office of a person deemed to be a member of the Board under section 2 of this Schedule shall be the period beginning with the commencement of the amendment Ordinance of 2008 and ending with the first nomination or election of a person to that membership position by a nomination or election made or held after that commencement (and for the purpose of any such first nomination or election the membership position shall be regarded as being vacant).

- 4. Until such time as all membership positions of the Board have been filled by nomination or election or appointment made or held after the commencement of the amendment Ordinance of 2008, the quorum for a meeting of the Board shall be two thirds of the number of members of the Board deemed to be appointed under section 2 of this Schedule plus the Chief Executive Officer or his representative.
- 5. Where a vacancy in a membership position of the Board to which section 2 of this Schedule applies arises before the first nomination or election of a person to that membership position as mentioned in section 3 of this Schedule, the Board may appoint a person to be a member of the Board pending that first nomination or election.

#### Nominating Committee

6. As at the commencement of the amendment Ordinance of 2008, a person specified in column 3 of the table shall be deemed to be a member of the Nominating Committee nominated for the purposes of the provision of section 8(2) of this Ordinance specified in relation to that person in column 2 of the table—

#### **TABLE**

Item	Provision of section 8(2) of this Ordinance	Member
1.	Paragraph (a) (persons nominated by the Committee of School Council Chairmen from among the members of the Committee)	<ul><li>(a) Mr Gordon Lamb</li><li>(b) Ms Glynis Gibson</li></ul>
2.	Paragraph (b), person from the business sector nominated by The Hong Kong General Chamber of Commerce	Mr Neville Shroff
3.	Paragraph (b), person from the business sector nominated by The British Chamber of Commerce in Hong Kong	Brigadier Christopher Hammerbeck CB
4.	Paragraph (c) (person active in the field of higher education, nominated by one of the higher education institutions specified in that paragraph)	Professor Victor On-kwok Li

A 249

Provision of section 8(2)
Item of this Ordinance

Member

- 5. Paragraph (d) (person nominated by the Committee of Parents from among the members of the Committee)
- Mr Chris Tringham

7. The deeming under section 6 of this Schedule of a person to be a member of the Nominating Committee for the purpose of section 8(2)(c) of this Ordinance shall not be regarded as a nomination under that paragraph for the purposes of section 8(3) of this Ordinance and, accordingly, the first nomination of a person as a member of the Nominating Committee under section 8(2)(c) of this Ordinance to be made after the commencement of the amendment Ordinance of 2008 shall be made by the higher education institution specified in section 8(2)(c)(i) of this Ordinance.

#### Chief Executive Officer

8. As at the commencement of the amendment Ordinance of 2008, the person who immediately before that commencement was the Secretary of the Foundation shall be deemed to be the Chief Executive Officer of the Foundation appointed for the purposes of section 11(1) of this Ordinance.

#### School Councils

9. As at the commencement of the amendment Ordinance of 2008, a person who immediately before that commencement was a member of the School Council of a school of the Foundation for the purposes of a provision of regulation 14.9 or 14.10 of the repealed Regulations as specified in column 2 of the table shall be deemed to be a member of the School Council of the school nominated, elected or appointed for the purposes of the provision of section 14(1) of this Ordinance specified in relation to that person in column 3 of the table—

#### **TABLE**

Provision of regulation 14.9 or 14.10 of repealed Item Regulations

- Provision of section 14(1) of this Ordinance
- 1. Paragraph (*d*)(i) (Person appointed by the Executive Committee as chairman of the Council)

Paragraph (a) (a Chairman, appointed by the Board)

2. Paragraph (*a*) ("Government and Community")

Paragraph (b)(i) (persons from the general community who are neither employees of the Foundation nor parents of students of the school, appointed by the Board)

Paragraph (b)(iii) (a group

3. Paragraph (*b*) ("Parents")

Paragraph (b)(iii) (a group comprising—

- (a) one person, who is not an employee of the Foundation, elected by the parent members of the committee of the Parent Teacher Association of the school from among their own number; and
- (b) one or more persons, who are not employees of the Foundation, elected by the parents of students of the school from among their own number)

4. Paragraph (c) ("Teachers")

Paragraph (b)(ii) (persons elected by the members of the teaching staff of the school from among their own number)

- 10. The term of office of a person deemed to be a member of a School Council under section 9 of this Schedule shall be the period beginning with the commencement of the amendment Ordinance of 2008 and ending with the first nomination or election of a person to that membership position by a nomination or election made or held after that commencement (and for the purpose of any such first nomination or election the membership position shall be regarded as being vacant).
- 11. Where a vacancy in a membership position of a School Council to which section 9 of this Schedule applies arises before the first nomination or election of a person to that membership position as mentioned in section 10 of this Schedule, the School Council may appoint a person to be a member of the School Council pending that first nomination or election.".

#### 19. Regulations repealed

The regulations made under the principal Ordinance before the commencement of this Ordinance are repealed.

#### 20. Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.