

Chapter:	279	EDUCATION ORDINANCE	Gazette Number	Version Date
		Long title	55 of 2000	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 55 of 2000 s. 3

**#EDUCATION ORDINANCE**

To promote education in Hong Kong, and to consolidate and amend the law relating to the supervision and control of schools and the teaching therein, and for purposes connected therewith.

(Amended 55 of 2000 s. 3)

[30 September 1971]\* *L.N. 116 of 1971*

(Originally 52 of 1971)

**Note:**

# For the saving and transitional provisions relating to the amendments made by the Education Reorganization (Miscellaneous Amendments) Ordinance 2003 (3 of 2003), please see Part 3 of that Ordinance.

\* Sections 9(3), 73, 74, 75, 76, 77, 78 and 84 came into operation on the 3rd day of September 1971. (L.N. 103 of 1971)

Part:	I	PRELIMINARY		30/06/1997
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Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Education Ordinance.

Section:	2	Application	L.N. 211 of 1999	30/07/1999
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This Ordinance shall not apply to-

- (a) the University of Hong Kong established by the University of Hong Kong Ordinance (Cap 1053);
- (b) The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap 1109);
- (c) The Hong Kong Polytechnic University established by the Hong Kong Polytechnic University Ordinance (Cap 1075); (Amended 6 of 1982 s. 24; 94 of 1994 s. 24)
- (d) any post secondary college registered under the Post Secondary Colleges Ordinance (Cap 320);
- (e) any technical college or technical institute defined in section 2 of the Vocational Training Council Ordinance (Cap 1130); (Added 6 of 1982 s. 24. Amended 50 of 1983 s. 34; 35 of 1991 s. 14)
- (f) any industrial training centre or skills centre defined in section 2 of the Vocational Training Council Ordinance (Cap 1130); (Added 6 of 1982 s. 24. Amended 35 of 1991 s. 14)
- (g) the Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap 1126); (Added 50 of 1983 s. 34. Amended 38 of 1984 s. 28; 93 of 1994 s. 40)
- (h) the City University of Hong Kong established by the City University of Hong Kong Ordinance (Cap 1132); (Added 65 of 1983 s. 25. Amended 38 of 1984 s. 28; 47 of 1987 s. 25; 92 of 1994 s. 33)
- (i) The Hong Kong Academy for Performing Arts established by The Hong Kong Academy for Performing Arts Ordinance (Cap 1135); (Added 38 of 1984 s. 28. Amended 47 of 1987 s. 25)
- (j) The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap 1141); (Added 47 of 1987 s. 25)
- (k) The Open University of Hong Kong established by The Open University of Hong Kong Ordinance (Cap 1145); (Replaced 50 of 1997 s. 29)

- (l) Lingnan University established by the Lingnan University Ordinance (Cap 1165); or (Replaced 54 of 1999 s. 31)
- (m) The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap 444). (Added 16 of 1994 s. 26)

Section:	3	Interpretation	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) In this Ordinance, unless the context otherwise requires- (Amended 27 of 2004 s. 2)

"aided school" (資助學校) means any school that receives subsidies 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; (Added 21 of 2000 s. 2)

"Appeal Board" (上訴委員會) means an Appeal Board appointed under section 62(1)(aa); (Added 1 of 2004 s. 2)

"Appeal Boards Panel" (上訴委員團) means the Appeal Boards Panel appointed under section 59(1)(a); (Added 1 of 2004 s. 2)

"authorized person" (獲授權人士) has the same meaning as it has in section 2 of the Buildings Ordinance (Cap 123); (Replaced 47 of 1990 s. 2)

"Building Authority" (建築事務監督) has the same meaning as it has in section 2 of the Buildings Ordinance (Cap 123);

"certificate of provisional registration" (臨時註冊證明書) means in relation to a school which is provisionally registered, the certificate which is issued by the Permanent Secretary under section 18(1) in respect of the school; (Amended 3 of 2003 s. 2)

"certificate of registration" (註冊證明書) means-

- (a) in relation to a school which is registered under section 13, the certificate issued by the Permanent Secretary under section 18(1) in respect of the school; and
- (b) in relation to a school which is registered under either of the repealed Ordinances, the certificate of registration issued by the Permanent Secretary under such Ordinance in respect of the school; (Amended 3 of 2003 s. 2)

"code of aid for primary schools" (小學資助則例) means the code described as such and issued by the Permanent Secretary, under the terms of which the Government gives subsidies to certain primary schools, as the same may be amended from time to time; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"code of aid for secondary schools" (中學資助則例) means the code described as such and issued by the Permanent Secretary, under the terms of which the Government gives subsidies to certain secondary schools, as the same may be amended from time to time; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"code of aid for special schools" (特殊學校資助則例) means the code described as such and issued by the Permanent Secretary, under the terms of which the Government gives subsidies to certain special schools, practical schools or skills opportunity schools, as the same may be amended from time to time; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"document" (文件) includes any account, counterfoil, text-book, exercise book, pamphlet, publication, newspaper, poster, drawing, sketch, film, filmstrip, slide, gramophone record, and other printed, written or recorded matter, whether relating to school management, teaching or recreation or to any other activity of or in connection with a school;

"DSS school" (直資學校) means a school which has joined the Direct Subsidy Scheme administered by the Permanent Secretary under which the school receives subsidy directly from the Government on such terms and conditions as specified by the Government from time to time; (Added 1 of 2004 s. 2)

"evening instruction" (夜間授課) means any instruction the greater part of which in any one day takes place after 6 p.m.;

"functions" (職能) includes powers and duties;

"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; (Added 27 of 2004 s. 2)

"inclusive fee" (費用總額) means the total sum of money charged in respect of the education of a pupil in a school;

"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; (Added 27 of 2004 s. 2)

"inspector of schools" (學校督學) means a person who is appointed under section 79 to be an inspector of schools, a medical officer of schools and a health inspector of schools;

"kindergarten education" (幼稚園教育) means a 2 years course of education normally commencing when a child has attained the age of 4 years; (Replaced 42 of 1993 s. 2)

"manage" (管理) includes administer;

"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; (Added 27 of 2004 s. 2)

"management committee" (校董會), in relation to a school without IMC, means the managers of the school; (Replaced 27 of 2004 s. 2)

"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; (Replaced 27 of 2004 s. 2)

"nursery education" (幼兒教育) means a one year course of education normally commencing when a child has attained the age of 3 years; (Replaced 42 of 1993 s. 2)

"Permanent Secretary" (常任秘書長) means the Permanent Secretary for Education; (Added 3 of 2003 s. 2. Amended L.N. 130 of 2007)

"permit to teach" (准用教員許可證) means a permit issued under section 50(1) or under either of the repealed Ordinances for the employment as a teacher in a school of a person who is not a registered teacher;

"permitted teacher" (准用教員) means a person, not being a registered teacher, who is permitted to be employed as a teacher in a school in accordance with a permit to teach;

"post secondary education" (專上教育) means education which is beyond the stage of secondary education;

"practical school" (實用中學) means a school that provides education for pupils through a practical curriculum and that has been approved by the Permanent Secretary for such purpose; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"primary education" (小學教育) means a 6 years course of education normally commencing when a child has attained the age of 6 years; (Replaced 42 of 1993 s. 2)

"primary school" (小學) means a school which provides primary education; (Added 34 of 1979 s. 2)

"principal" (校長) means, subject to section 58AA, a teacher who is approved as the principal of a school under section 53(2) or section 57(2) or under either of the repealed Ordinances; (Amended 8 of 2001 s. 2)

"proof of identity" (身分證明文件) has the meaning assigned to it by section 17B(1) of the Immigration Ordinance (Cap 115); (Added 8 of 2001 s. 2)

"provisionally registered" (臨時註冊) means provisionally registered under section 15;

"registered" (註冊), in relation to a school, means registered under section 13 or under either of the repealed Ordinances;

"registered name" (註冊名稱) means the name in which a school is registered or provisionally registered;

"registered teacher" (檢定教員) means a person who is registered as a teacher under section 45(1) or under either of the repealed Ordinances;

"repealed Ordinances" (已廢除條例) means-

- (a) the Education Ordinance 1952 (Cap 279 1964 Ed.); and
- (b) the Education Ordinance 1913 (26 of 1913);

"school" (學校) means an institution, organization or establishment which provides for 20 or more persons during any

one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post secondary education or any other educational course by any means, including correspondence delivered by hand or through the postal services; (Amended 38 of 1983 s. 2; 42 of 1993 s. 2)

"school management company" (學校管理公司), in relation to a school, means a company designated as such under subsection (2); (Added 27 of 2004 s. 2)

"school premises" (校舍) includes school recreation rooms, residential facilities, playing fields and playing grounds, and any other places used for the purposes of a school;

"school without IMC" (不設法團校董會學校) means a school other than an IMC school; (Added 27 of 2004 s. 2)

"secondary education" (中學教育) means a course of education after primary education which normally commences when a child has attained the age of 12 years and is completed before he attains the age of 19 years; (Replaced 42 of 1993 s. 2)

"secondary school" (中學) means a school which provides secondary education; (Added 34 of 1979 s. 2)

"skills opportunity school" (技能訓練學校) means a school that provides education for pupils through a skills oriented curriculum and that has been approved by the Permanent Secretary for such purpose; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"special school" (特殊學校) means a school that provides education for pupils through a special education curriculum and that has been approved by the Permanent Secretary for such purpose; (Added 21 of 2000 s. 2. Amended 3 of 2003 s. 2)

"specified form" (指明格式) means a form specified by the Permanent Secretary; (Added 8 of 2001 s. 2. Amended 3 of 2003 s. 2)

"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; (Replaced 27 of 2004 s. 2)

"supervisor" (校監) means-

- (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. (Amended 27 of 2004 s. 2)

(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. (Added 27 of 2004 s. 2)

(3) A notice published under subsection (2) is not subsidiary legislation. (Added 27 of 2004 s. 2)  
(Amended 42 of 1993 s. 2; 8 of 2001 s. 2; 3 of 2003 s. 2; 27 of 2004 s. 2)

Section:	4	(Repealed 42 of 1993 s. 3)		30/06/1997
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Section:	5	Delegation of Permanent Secretary's powers	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) (Repealed 3 of 2003 s. 3)
- (2) The Permanent Secretary may authorize any officer of the Education Bureau- (L.N. 130 of 2007)
  - (a) to exercise any function of the Permanent Secretary under any provision of this Ordinance other than section 9(5); or
  - (b) at the directorate rank to exercise any function of the Permanent Secretary under section 9(5).

(Amended 8 of 2001 s. 3; 3 of 2003 s. 3)

Section:	6	Power of Chief Executive to give directions	3 of 2003	28/02/2003
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(1) The Chief Executive may give to the Permanent Secretary and to any other public officer, other than a judge, a district judge, or a magistrate, such directions as he thinks fit with respect to the exercise or performance of their respective functions under this Ordinance, either generally or in any particular case. (Amended 3 of 2003 s. 11)

(2) A person to whom a direction is given by the Chief Executive under subsection (1) shall, in the exercise or performance of his functions under this Ordinance, comply with that direction.

(Amended 55 of 2000 s. 3)

Section:	7	(Repealed 3 of 2003 s. 4)	3 of 2003	28/02/2003
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Section:	7A	(Repealed 3 of 2003 s. 5)	3 of 2003	28/02/2003
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Section:	8	Permanent Secretary to maintain registers	27 of 2004	01/01/2005
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(1) The Permanent Secretary shall maintain- (Amended 3 of 2003 s. 11)

(a) a register of schools, in which shall be entered-

(i) the name of every registered school; and

(ii) the premises which are specified in the certificate of registration of the school;

(b) a register of schools which are provisionally registered, in which shall be entered-

(i) the name of every school which is provisionally registered; and

(ii) the premises which are specified in the certificate of provisional registration of the school;

(c) (Repealed 42 of 1993 s. 5)

(d) a register of managers, in which shall be entered-

(i) the name and address of every manager; and

(ii) the registered name and the address of every school of which a person is a manager; (Amended 27 of 2004 ss. 3 & 72)

(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 (Added 27 of 2004 s. 3)

(e) a register of teachers, in which shall be entered the name of every registered teacher.

(2) Such other particulars as the Permanent Secretary considers necessary may be entered in any register or list referred to in subsection (1). (Amended 3 of 2003 s. 11)

(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. (Added 27 of 2004 s. 3)

Section:	9	Exemption of schools from Ordinance	27 of 2004	01/01/2005
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(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. (Added 27 of 2004 s. 4)

(1) The following schools and the interested persons of such schools shall be exempt from this Ordinance- (Amended 27 of 2004 s. 4)

- (a) any school entirely maintained and controlled by the Government;
- (aa) any school which solely provides regulated courses within the meaning of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap 493); (Added 50 of 1996 s. 43)
- (b) any school which provides education which is solely religious; and
- (c) any school which has been exempted from either of the repealed Ordinances by notification in the Gazette and the exemption of which has not been withdrawn.

(2) The Chief Executive in Council may, by order published in the Gazette, withdraw wholly or partly the exemption conferred by subsection (1) on any school and the interested persons of the school. (Amended 55 of 2000 s. 3)

(3) The Chief Executive in Council may, by order published in the Gazette, exempt from all or any of the provisions of this Ordinance- (Amended 55 of 2000 s. 3)

- (a) any school or class or description of school; and
- (b) the interested persons of such school or class or description of school,

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

(4) An order under subsection (3) exempting a school from section 10 shall not preclude the making of an application for registration of the school or the registration or provisional registration of the school, and if the school is registered or provisionally registered the exemption shall cease to have effect.

(5) The Permanent Secretary may, by order in writing, exempt from all or any of the provisions of this Ordinance- (Amended 3 of 2003 s. 11)

- (a) any school which provides education consisting only of a series of lectures, or a course of instruction in a particular subject or topic;
- (b) any school which provides less than 10 hours of academic instruction each week; and
- (c) the interested persons of any school referred to in paragraph (a) or (b),

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

(Amended 27 of 2004 s. 4)

Part:	II	REGISTRATION AND PROVISIONAL REGISTRATION OF SCHOOLS	L.N. 18 of 2004	01/04/2004
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Section:	10	Schools to be registered or provisionally registered	L.N. 18 of 2004	01/04/2004
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(1) Every school shall be registered or provisionally registered.

(2) If an aided school or a DSS school provides evening instruction in addition to other education, there shall be deemed to be a separate school in respect of the evening instruction and such separate school shall also be registered or provisionally registered. (Amended 1 of 2004 s. 3)

Section:	11	Application for registration of school	3 of 2003	28/02/2003
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An application for registration of a school shall be-

- (a) made to the Permanent Secretary in the specified form; and (Amended 42 of 1993 s. 6; 8 of 2001 s. 4; 3 of 2003 s. 11)
- (b) accompanied-
  - (i) by the documents specified in such form; and
  - (ii) if the school is to be operated in or in any part of any premises which are not designed and constructed for the purposes of a school, by the additional documents specified in section 12(1).

Section:	12	Additional documents required where premises not designed and constructed as a school	3 of 2003	28/02/2003
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(1) The documents referred to in section 11(b)(ii) shall be-

- (a) a certificate from the competent authority as to his opinion with regard to the suitability for the

purposes of a school of the premises or the part of the premises in which the school is to be operated, having regard to the loading for which they are designed and constructed;

- (b) a certificate from the competent authority that the premises in or in part of which the school is to be operated do not have structural timber floors;
- (c) a certificate from the Director of Fire Services that the use for the purposes of a school of the premises or the part of the premises in which the school is to be operated would not expose the persons in the school premises to any undue risk of fire; (Replaced 6 of 1985 s. 2)
- (ca) a certificate from the competent authority that in the event of fire in the premises in or in part of which the school is to be operated the means of escape for all persons in the premises (including the persons in the school premises) would be adequate; (Added 6 of 1985 s. 2. Amended 47 of 1990 s. 4)
- (d) if the Buildings Ordinance (Cap 123) applies to the premises in or in part of which the school is to be operated, a notice in writing from the Building Authority stating that he does not intend, in exercise of the powers conferred on him by section 25 of that Ordinance, to prohibit the use for the purposes of a school of the premises or the part of the premises in which the school is to be operated; and
- (e) if-
  - (i) the competent authority has certified under paragraph (a) that in his opinion the premises or the part of the premises in which the school is to be operated are not suitable for the purposes of a school, having regard to the loading for which they are designed and constructed;
  - (ii) the premises in or in part of which the school is to be operated were erected prior to 1 January 1946; or
  - (iii) at the time of erection of the premises in or in part of which the school is to be operated, the Buildings Ordinance (Cap 123) did not apply to such premises,
 a certificate from an authorized person that the premises in or in part of which the school is to be operated are in sound structural condition. (Amended 47 of 1990 s. 4)

(2) An application to the competent authority, the Building Authority or the Director of Fire Services for a certificate or a notice required for the purposes of subsection (1) shall be-

- (a) made in such form as the Permanent Secretary shall specify; and
- (b) accompanied by a plan, drawn to such scale and with such number of copies as the Permanent Secretary shall specify, of the premises or the part of the premises in which the school is to be operated. (Amended 3 of 2003 s. 11)

(3) The Director of Buildings may, where he is the competent authority for the purposes of subsection (1)(a), (b) and (ca), appoint any officer of the Buildings Department to perform the functions of the competent authority under those paragraphs. (Amended L.N. 76 of 1982; L.N. 94 of 1986; 47 of 1990 s. 4; L.N. 291 of 1993)

(4) Nothing in this section shall affect the powers of the Building Authority under the Buildings Ordinance (Cap 123).

(5) For the purposes of this section, "competent authority" (主管當局) means-

- (a) the Housing Authority in the case of any premises or part of any premises upon land vested in the Housing Authority or over which the Housing Authority has control and management; (Replaced 23 of 1973 s. 36)
- (b) (Repealed 23 of 1973 s. 36)
- (c) in any other case, the Director of Buildings and any officer of the Buildings Department appointed by him under subsection (3). (Amended L.N. 76 of 1982; L.N. 94 of 1986; L.N. 291 of 1993)

Section:	13	Registration of school	3 of 2003	28/02/2003
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On receiving an application in accordance with section 11, the Permanent Secretary shall make such inquiry as he considers necessary and shall determine the application- (Amended 3 of 2003 s. 11)

- (a) by registering the school in respect of which the application is made; or
- (b) by refusing under section 14 to register the school.

Section:	14	Grounds for refusal to register school	27 of 2004	01/01/2005
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(1) The Permanent Secretary may refuse to register a school if it appears to him- (Amended 3 of 2003 s. 11)

- (a) (Repealed 42 of 1993 s. 7)

- (b) that the proposed school premises are or are likely to be for any reason unsuitable for use for the purposes of a school;
- (c) that any provision of this Ordinance is being or will be contravened in respect of the school;
- (d) that the proposed inclusive fee is excessive having regard to the cost of maintaining and operating the school and to the standard of education to be provided;
- (e)-(f) (Repealed 42 of 1993 s. 7)
- (g) that the equipment which is to be used by the school will not allow of satisfactory tuition in the subjects to be taught by the school; (Amended 42 of 1993 s. 7)
- (h) (Repealed 42 of 1993 s. 7)
- (i) that the composition of the proposed management committee or incorporated management committee (as may be appropriate) is such that the school is not likely to be managed satisfactorily, or is such that the education of the pupils is not likely to be promoted in a proper manner; (Amended 42 of 1993 s. 7; 27 of 2004 s. 5)
- (j) that the composition of the proposed management committee or incorporated management committee (as may be appropriate) or of the proposed teaching staff is the same or substantially the same as that of a school which the Permanent Secretary has previously refused to register, or the registration or provisional registration of which the Permanent Secretary has previously cancelled; (Amended 27 of 2004 s. 5)
- (k) that he has previously-
  - (i) refused to register the school; or
  - (ii) cancelled the registration or provisional registration of the school;
- (l) that any part of the proposed school premises-
  - (i) was to have been used for the purposes of a school which the Permanent Secretary has previously refused to register; or
  - (ii) has been used for the purposes of a school the registration or provisional registration of which the Permanent Secretary has cancelled;
- (m) (Repealed 42 of 1993 s. 7)
- (n) that in or in connection with the application for registration any statement has been made or information has been furnished which is false in any material particular or by reason of the omission of any material particular;
- (o) that the proposed registered name of the school is unsuitable, or is the same as or similar to-
  - (i) the name in which another school is registered; or
  - (ii) the name of any school the registration of which has been cancelled; or
- (p) that the content of the course to be offered is not of a satisfactory standard. (Added 42 of 1993 s. 7)

(2) The Permanent Secretary may also refuse to register a school if he refuses under section 35(1) to approve as the first supervisor of the school the person who is recommended to be the supervisor by the applicant for registration of the school.

(Amended 3 of 2003 s. 11)

Section:	15	Provisional registration of school	3 of 2003	28/02/2003
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(1) At any time after an application for registration of a school is made in accordance with section 11 and before the application is determined, the Permanent Secretary may provisionally register the school for such period, not exceeding 12 months, as he thinks fit.

(2) The Permanent Secretary may extend the period of provisional registration of a school for such further periods, not exceeding 12 months at one time, as he thinks fit.

(Amended 3 of 2003 s. 11)

Section:	16	Effect on provisional registration when application for registration is determined	3 of 2003	28/02/2003
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(1) If the Permanent Secretary registers a school which is provisionally registered, the provisional registration of the school shall cease to have effect.

(2) If the Permanent Secretary refuses to register a school which is provisionally registered, the provisional registration of the school shall not by reason only of such refusal cease to have effect.

(Amended 3 of 2003 s. 11)

Section:	17	Restrictions on registration and provisional registration	3 of 2003	28/02/2003
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Notwithstanding sections 13 and 15, the Permanent Secretary shall not- (Amended 3 of 2003 s. 11)

- (a) register or provisionally register a school in any name containing the word "university" or the Chinese characters "大學" or "學院"; or
- (b) (Repealed 42 of 1993 s. 8)

Section:	18	Certificate of registration or provisional registration	27 of 2004	01/01/2005
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(1) On registering or provisionally registering a school, the Permanent Secretary shall issue to the management authority a certificate of registration or a certificate of provisional registration in the specified form and sufficient copies of the certificate so that the certificate or a copy may be exhibited in each of the premises specified in the certificate. (Amended 8 of 2001 s. 4)

(2) Except as provided in subsection (3), section 20 and section 71, the management authority of a school shall cause the certificate or a copy issued by the Permanent Secretary under subsection (1) to be exhibited at all times in a conspicuous place in each of the premises specified in the certificate.

(3) If the Permanent Secretary extends the period of provisional registration of a school under section 15(2), the management authority shall within one month after the date when it is notified of the extension deliver the certificate of provisional registration and every copy of the certificate to the Permanent Secretary, who shall amend the certificate and the copies thereof accordingly and return them to the management authority. (Amended 27 of 2004 s. 6)

(Amended 3 of 2003 s. 11; 27 of 2004 s. 70)

Section:	18A	Approval of Permanent Secretary required for post secondary education	27 of 2004	01/01/2005
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(1) No management authority of a school shall cause or allow post secondary education to be provided at the school unless it has received the approval of the Permanent Secretary to do so. (Amended 3 of 2003 s. 11; 27 of 2004 s. 70)

(2) The supervisor of a school without IMC who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months. (Amended L.N. 205 of 2000)

(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. (Added 27 of 2004 s. 7)

(Added 42 of 1993 s. 9. Amended 27 of 2004 s. 7)

Section:	19	Premises in which school may be operated		30/06/1997
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(1) No school shall be operated in any premises other than the premises specified in the certificate of registration or provisional registration of the school.

(2) No teacher in any school shall teach in any premises other than the premises specified in the certificate of registration or provisional registration of the school.

Section:	20	Change of premises	27 of 2004	01/01/2005
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(1) The management authority of a school may apply in writing to the Permanent Secretary to amend the certificate of registration or provisional registration by- (Amended 3 of 2003 s. 11; 27 of 2004 s. 70)

- (a) specifying in the certificate any additional or alternative premises; or
  - (b) deleting from the certificate reference to any premises or to any part of any premises.
- (2) An application under subsection (1) shall be accompanied by-
- (a) the certificate in respect of which the application is made;
  - (b) every copy of the certificate issued under section 18(1); and

(c) 3 copies of a plan or diagram, specifying dimensions, of the premises or the part of the premises to which the application relates.

(3) An application under subsection (1)(a) shall specify the names and addresses of the landlord and the tenant of the premises or the part of the premises to which the application relates.

(4) An application under subsection (1)(a) in respect of any premises or any part of any premises which are not designed and constructed for the purposes of a school shall be accompanied by the certificates and the notice specified in section 12(1), and the provisions of section 12(2), (3), (4) and (5) shall apply as if the application were an application for registration of a school.

(5) On receiving an application in accordance with this section, the Permanent Secretary shall make such inquiry as he considers necessary and shall determine the application- (Amended 3 of 2003 s. 11)

(a) by granting the application wholly or partly, in either of which cases he shall amend the certificate of registration or provisional registration and the copies thereof accordingly; or

(b) by refusing to grant the application.

(6) The Permanent Secretary shall return to the management authority the certificate of registration or provisional registration and the copies thereof, amended accordingly if he grants an application under subsection (5)(a). (Amended 3 of 2003 s. 11; 27 of 2004 s. 70)

Section:	20A	Change of name for school	3 of 2003	28/02/2003
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(1) Where a school that is registered or provisionally registered wishes to change its name it shall first obtain the approval of the Permanent Secretary.

(2) In considering an application under this section the same criteria apply as in a decision by the Permanent Secretary under section 14(1)(o).

(Added 42 of 1993 s. 10. Amended 3 of 2003 s. 11)

Section:	21	Changes in design or use of premises increasing fire risk	27 of 2004	01/01/2005
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(1) If in the opinion of the Director of Fire Services a change in-

(a) the design or structure of the premises in or in any part of which a school is operated; or

(b) the use of any part of the premises in or in any part of which a school is operated,

is such that the persons in the school premises are exposed to any undue risk of fire, he may deliver to the Permanent Secretary a notice in writing which shall either- (Amended 3 of 2003 s. 6)

(i) specify any provision which in his opinion should be made by the school to eliminate the undue risk of fire; or

(ii) if the Director of Fire Services considers that no provision can be made by the school to eliminate the undue risk of fire, state that in his opinion no such provision can be made. (Replaced 6 of 1985 s. 3)

(1A) If in the opinion of the Building Authority a change in-

(a) the design or structure of the premises in or in any part of which a school is operated; or

(b) the use of any part of the premises in or in any part of which a school is operated,

is such that in the event of fire in the premises in or in any part of which the school is operated the means of escape for all the persons in the premises (including the persons in the school premises) would not be adequate, he may deliver to the Permanent Secretary a notice in writing which shall either- (Amended 3 of 2003 s. 6)

(i) specify any provision which in his opinion should be made by the school to ensure that in the event of fire the means of escape for all the persons in the premises (including the persons in the school premises) will be adequate; or

(ii) if the Building Authority considers that no provision can be made by the school to ensure that in the event of fire the means of escape for all the persons in the premises (including the persons in the school premises) will be adequate, state that in his opinion no such provision can be made. (Added 6 of 1985 s. 3)

(2) If the Director of Fire Services delivers to the Permanent Secretary a notice under subsection (1) in respect of a school specifying any provision which the Director of Fire Services considers should be made by the school, the Permanent Secretary may by notice in writing served on the management authority of the school require such provision to be made. (Amended 27 of 2004 s. 70)

(3) If the Building Authority delivers to the Permanent Secretary a notice under subsection (1A) in respect of a school specifying any provision which the Building Authority considers should be made by the school, the Permanent

Secretary may by notice in writing served on the management authority of the school require such provision to be made. (Added 6 of 1985 s. 3. Amended 27 of 2004 s. 70)

(Amended 3 of 2003 s. 6)

Section:	22	Grounds for cancellation of registration or provisional registration of school	27 of 2004	01/01/2005
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(1) The Permanent Secretary may cancel the registration or provisional registration of a school- (Amended 3 of 2003 s. 7)

- (a) on any ground specified in section 14(1)(b), (c), (d), (g), (i), (j), (k), (l), (n) or (p) on which he would have been entitled to refuse registration of a school, whether or not such ground existed at the time when the school was registered or provisionally registered; (Amended 42 of 1993 s. 11)
- (b) if any manager of the school has committed an offence against this Ordinance subsequent to the registration or provisional registration of the school;
- (c) if it appears to the Permanent Secretary that the school has ceased to exist, or that for a continuous period of not less than one school term the school has ceased to operate;
- (ca) upon the written application of the supervisor, if the registration or provisional registration of the school, not being an aided school or a DSS school, was effected-
  - (i) before the commencement\* of section 3 of the Education (Miscellaneous Amendments) Ordinance 2004 (1 of 2004); and
  - (ii) under section 10(2) in respect of evening instruction; (Added 1 of 2004 s. 4)
- (d) if a direction given in a notice served under section 82(2) has not been complied with; (Amended 27 of 2004 s. 8)
- (e) if it appears to the Permanent Secretary that the school is not being managed satisfactorily, or that the education of the pupils is not being promoted in a proper manner; (Amended 27 of 2004 s. 8)
- (f) if, in the case of a school which is operated in or in any part of any premises which, in the opinion of the competent authority for the purposes of section 12, are unsuitable for use for the purposes of a school having regard to the loading for which the premises or the part of the premises are designed and constructed, the Permanent Secretary has received a report from an authorized architect that the premises in or in part of which the school is operated are not in sound structural condition;
- (g) if in respect of the school any provision specified in a notice under section 21(2) or (3) has not been made- (Amended 6 of 1985 s. 4)
  - (i) within 2 months of the date of service of the notice; or
  - (ii) before the commencement of the school term next following the date of service of the notice, whichever is the earlier, or within such further period as the Permanent Secretary may permit;
- (h) if, under section 21(1), the Permanent Secretary has received a notice from the Director of Fire Services stating that, in the latter's opinion, no provision can be made by the school to eliminate any undue risk of fire; (Replaced 6 of 1985 s. 4)
- (ha) if, under section 21(1A), the Permanent Secretary has received a notice from the Building Authority stating that, in the latter's opinion, no provision can be made by the school to ensure that in the event of fire in the premises in or in any part of which the school is operated the means of escape for all the persons in the premises (including the persons in the school premises) will be adequate; (Added 6 of 1985 s. 4)
- (i) if the school is operated in any name other than the name in which it is registered or provisionally registered; or
- (j) if it appears to the Permanent Secretary that any provision of this Ordinance is being or has been contravened in respect of the school. (Amended 3 of 2003 s. 7)

(2) The Permanent Secretary shall cancel the registration or provisional registration of a school if- (Amended 3 of 2003 s. 7)

- (a) the registration of every manager of the school is cancelled; and
- (b) no manager of the school is permitted under section 66 to continue to act as a manager of the school.

**Note:**

\* Commencement date: 1 April 2004.

Part:	III	REGISTRATION OF MANAGERS OF SCHOOLS*	27 of 2004	01/01/2005
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**Note:**

\* (Amended 27 of 2004 s. 9)

Section:	23	(Repealed 42 of 1993 s. 12)	27 of 2004	01/01/2005
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Section:	24	(Repealed 42 of 1993 s. 12)		30/06/1997
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**PART III**

MANAGERS OF SCHOOLS

(Repealed 42 of 1993 s. 12)

Section:	25	(Repealed 42 of 1993 s. 12)		30/06/1997
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**PART III**

MANAGERS OF SCHOOLS

(Repealed 42 of 1993 s. 12)

Section:	26	(Repealed 42 of 1993 s. 12)		30/06/1997
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**PART III**

MANAGERS OF SCHOOLS

(Repealed 42 of 1993 s. 12)

Section:	27	Managers of schools to be registered	27 of 2004	01/01/2005
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(Subheading repealed 27 of 2004 s. 10)

No person shall act as a manager of a school unless he is registered as a manager of the school under section 29(1).

Section:	28	Application for registration of manager	3 of 2003	28/02/2003
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An application for registration as a manager of a school shall be made to the Permanent Secretary in the specified form.

(Amended 42 of 1993 s. 13; 8 of 2001 s. 4; 3 of 2003 s. 11)

Section:	29	Registration of manager	3 of 2003	28/02/2003
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(1) On receiving an application in accordance with section 28, the Permanent Secretary shall make such inquiry as he considers necessary and shall determine the application- (Amended 3 of 2003 s. 11)

- (a) by registering the applicant as a manager of the school in respect of which the application is made; or
- (b) by refusing under section 30 to register the applicant as a manager of the school in respect of which the application is made.

(2) (Repealed 8 of 2001 s. 5)

Section:	30	Grounds for refusal to register manager	27 of 2003	01/01/2005
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(1) The Permanent Secretary may refuse to register an applicant as a manager of a school if it appears to the Permanent Secretary that- (Amended 3 of 2003 s. 11)

- (a) the applicant is not resident in Hong Kong for at least 9 months in each year;
- (b) the applicant is not a fit and proper person to be a manager;
- (c) the applicant is a person in respect of whom a permit to teach has previously been cancelled;
- (d) (Repealed 27 of 2004 s. 11)
- (e) in making or in connection with any application-
  - (i) for registration of a school;
  - (ii) for registration as a manager or a teacher; or
  - (iii) to employ a person as a permitted teacher in a school,
 the applicant has made any statement or furnished any information which is false in any material particular or by reason of the omission of any material particular.
- (f) (Repealed 27 of 2004 s. 11)

(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. (Added 27 of 2004 s. 11)

(2) The Permanent Secretary shall refuse to register an applicant as a manager of- (Amended 3 of 2003 s. 11; 27 of 2004 s. 11)

- (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.

(Amended 27 of 2004 s. 11)

Section:	31	Grounds for cancellation of registration of manager	27 of 2004	01/01/2005
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(1) The Permanent Secretary may cancel the registration of a manager of a school- (Amended 3 of 2003 s. 11)

- (a) if the person has been an office-bearer, as defined in section 2 of the Societies Ordinance (Cap 151), of any society or a branch which has had its registration or exemption from registration cancelled under section 5D, or its operation or continued operation prohibited by the Secretary for Security under section 8 of that Ordinance; (Amended 118 of 1997 s. 21)
- (b) on any ground specified in section 30(1) or (1A) which applies to the manager, whether or not such ground existed at the time when he was registered as a manager of the school; (Amended 27 of 2004 s. 12)

- (c) if it appears to the Permanent Secretary that the person- (Amended 3 of 2003 s. 11)
    - (i) has ceased to be a manager;
    - (ii) cannot perform satisfactorily or is not performing satisfactorily the duties of a manager;
  - (d) if the person has contravened any provision of this Ordinance;
  - (e) if it appears to the Permanent Secretary that- (Amended 3 of 2003 s. 11)
    - (i) any school of which the person is registered as a manager is not being managed satisfactorily;
    - (ii) in any school of which the person is registered as a manager, the education of the pupils is not being promoted in a proper manner; or
    - (iii) any pupil of a school of which the person is registered as a manager is not under proper supervision or control while on the school premises; (Amended 27 of 2004 s. 12)
  - (f) (Repealed 27 of 2004 s. 12)
  - (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; (Added 27 of 2004 s. 12)
  - (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; (Added 27 of 2004 s. 12)
    - (i) if he receives a notice under section 40AX as regards the manager; or (Added 27 of 2004 s. 12)
    - (j) if the manager contravenes section 40BF. (Added 27 of 2004 s. 12)
  - (2) The Permanent Secretary shall cancel the registration of a manager of a school- (Amended 3 of 2003 s. 11)
    - (a) (Repealed 27 of 2004 s. 12)
    - (aa) if he receives a notice under section 39(2)(a) or 40AK(1)(b)(i) in respect of the manager; (Added 27 of 2004 s. 12)
    - (ab) if he receives a notice under section 40AW as regards the manager; or (Added 27 of 2004 s. 12)
    - (b) at the written request of the manager.
- (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. (Added 27 of 2004 s. 12)
- (3) (Repealed 42 of 1993 s. 15)

Part:	IIIA	MANAGEMENT OF SCHOOLS WITHOUT INCORPORATED MANAGEMENT COMMITTEE*	27 of 2004	01/01/2005
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**Note:**

\* (Replaced 27 of 2004 s. 13)

Section:	31A	Application of Part IIIA	27 of 2004	01/01/2005
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This Part applies to a school without IMC.

(Added 27 of 2004 s. 14)

Section:	32	Management committee to manage school		30/06/1997
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Every school shall be managed by its management committee.

Section:	33	Responsibilities of management committee		30/06/1997
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The management committee of a school shall be responsible for ensuring-

- (a) that the school is managed satisfactorily;
- (b) that the education of the pupils is promoted in a proper manner; and
- (c) that this Ordinance is complied with.

Section:	34	Approval of first supervisor of school	27 of 2004	01/01/2005
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(Subheading repealed 27 of 2004 s. 15)

Subject to section 35, the Permanent Secretary shall approve as the first supervisor of a school the person who is recommended to be the supervisor by the applicant for registration of the school.

(Amended 3 of 2003 s. 11)

Section:	35	Grounds for refusal to approve supervisor	27 of 2004	01/01/2005
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(1) The Permanent Secretary may refuse to approve a person as the supervisor of a school if the Permanent Secretary is not satisfied that the person is a fit and proper person to be the supervisor.

(2) The Permanent Secretary shall not approve a person as the supervisor of a school unless the person is a manager of the school. (Amended 27 of 2004 s. 72)

(Amended 3 of 2003 s. 11)

Section:	36	Tenure of office of supervisor	27 of 2004	01/01/2005
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The supervisor of a school shall hold office until-

- (a) he ceases to be a manager of the school; (Amended 27 of 2004 s. 72)
- (b) he resigns;
- (c) the Permanent Secretary withdraws his approval of the supervisor under section 37; or (Amended 3 of 2003 s. 11)
- (d) the Permanent Secretary approves another manager of the school as the supervisor under section 38(2). (Amended 3 of 2003 s. 11; 27 of 2004 s. 72)

Section:	37	Grounds for withdrawal of approval of supervisor	3 of 2003	28/02/2003
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The Permanent Secretary may withdraw his approval of the supervisor of a school if it appears to the Permanent Secretary that the supervisor- (Amended 3 of 2003 s. 11)

- (a) is no longer a fit and proper person to be the supervisor;
- (b) is not performing the duties of the supervisor satisfactorily;
- (c) has ceased to perform the duties of the supervisor; or
- (d) is no longer acceptable as such to the majority of the management committee.

Section:	38	Approval of subsequent supervisors	27 of 2004	01/01/2005
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(1) If in the case of any school which is registered or provisionally registered-

- (a) the Permanent Secretary refuses under section 35 to approve a person who has been recommended to be the supervisor;
- (b) the supervisor ceases under section 36 to hold office;
- (c) there is for any other reason no supervisor;
- (d) the supervisor ceases to perform the duties of the supervisor; or
- (e) the supervisor is no longer acceptable as such to the majority of the management committee,

the management committee shall within one month recommend for the approval of the Permanent Secretary another manager of the school to be the supervisor. (Amended L.N. 95 of 1993)

(2) Subject to section 35, the Permanent Secretary shall approve as the supervisor of the school the manager who is recommended under subsection (1).

(Amended 3 of 2003 s. 11; 27 of 2004 s. 72)

Section:	38A	Approval of acting supervisor	27 of 2004	01/01/2005
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(1) If the supervisor of any school is or is likely to be-

- (a) absent from Hong Kong for a period of not less than 28 days; or

(b) unable by reason of his illness to carry out his duties for a period of not less than 28 days, the management committee shall recommend for the approval of the Permanent Secretary another manager of the school to act as supervisor during the supervisor's absence or inability to carry out his duties. (Amended L.N. 95 of 1993; 27 of 2004 s. 72)

(2) Subject to subsection (3), the Permanent Secretary shall approve as the acting supervisor of the school the manager who is recommended under subsection (1). (Amended 27 of 2004 s. 72)

(3) The Permanent Secretary may refuse to approve a person as the acting supervisor of a school if the Permanent Secretary is not satisfied that the person is a fit and proper person to be the acting supervisor.

(4) Without prejudice to subsection (5), the approval under subsection (2) shall be for such period as the Permanent Secretary may therein specify.

(5) The Permanent Secretary may at any time and for any reason withdraw his approval under subsection (2).

(6) Section 39 shall apply in relation to an acting supervisor approved under subsection (2) as it applies to a supervisor.

(Added 61 of 1982 s. 3. Amended 3 of 2003 s. 11)

Section:	39	Duties of supervisor	3 of 2003	28/02/2003
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(1) Subject to any other provision in this Ordinance, all correspondence between a school and the Permanent Secretary or any public officer concerning the management of the school shall be conducted on behalf of the school by the supervisor. (Amended 3 of 2003 s. 11)

(2) The supervisor of a school shall within 1 month after the happening of such event give notice in writing to the Permanent Secretary if- (Amended 3 of 2003 s. 11)

- (a) any person ceases to be a manager of the school;
- (b) the supervisor ceases to perform the duties of the supervisor;
- (c) the principal ceases to perform the duties of the principal;
- (d) any teacher commences to teach or is employed to teach at the school;
- (e) any teacher ceases to teach or ceases to be employed to teach at the school;
- (f) the supervisor becomes aware of a change in any particulars furnished under this Ordinance with respect to any landlord or tenant of the premises in which the school is operated.

(3) A notice under subsection (2) shall specify-

- (a) the full 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; and (Amended L.N. 162 of 1993)
- (b) the date of the event referred to in the notice.

Section:	40	Duties of management committee in absence of supervisor	27 of 2004	01/01/2005
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Without prejudice to section 38(1), if at any time there is no supervisor of a school, the duties of the supervisor under this Ordinance shall be performed by the management committee until a supervisor is approved by the Permanent Secretary, and in such case any notice which is to be served or which may be served under this Ordinance on the supervisor may be served on any manager of the school.

(Amended 3 of 2003 s. 11; 27 of 2004 s. 72)

Part:	IIIB	MANAGEMENT OF IMC SCHOOLS	27 of 2004	01/01/2005
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(Part IIIB added 27 of 2004 s. 16)

Section:	40AA	Application of certain provisions of this Part	27 of 2004	01/01/2005
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Expanded Cross Reference:

40AD, 40AE, 40AF, 40AG, 40AH, 40AI, 40AJ, 40AK, 40AL, 40AM, 40AN, 40AO, 40AP, 40AQ, 40AR, 40AS, 40AT, 40AU, 40AV, 40AW, 40AX, 40AY, 40AZ, 40BA, 40BB, 40BC, 40BD, 40BE, 40BF, 40BG, 40BH, 40BI

### General provisions

Sections 40AD to 40BI apply to IMC schools only. <\* Note - Exp. X-Ref.: 40AD, 40AE, 40AF, 40AG, 40AH, 40AI, 40AJ, 40AK, 40AL, 40AM, 40AN, 40AO, 40AP, 40AQ, 40AR, 40AS, 40AT, 40AU, 40AV, 40AW, 40AX, 40AY, 40AZ, 40BA, 40BB, 40BC, 40BD, 40BE, 40BF, 40BG, 40BH, 40BI>

(Part IIIB added 27 of 2004 s. 16)

Section:	40AB	Interpretation of Part IIIB	27 of 2004	01/01/2005
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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;

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

"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;

"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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AC	Secretary may amend Schedule 3	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Secretary for Education may by notice published in the Gazette amend Schedule 3. (Amended L.N. 130 of 2007)

(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AD	Incorporated management committee to manage school	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AE	Functions of sponsoring body and incorporated management committee	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AF	Powers of incorporated management committee	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AG	Power of sponsoring body over employment of teaching staff	27 of 2004	01/01/2005
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- (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).

(PART IIIB added 27 of 2004 s. 16)

Section:	40AH	Certain property not to vest in incorporated management committee	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AI	Irregular establishment, etc. do not affect contract	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AJ	Supervisor	27 of 2004	01/01/2005
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### **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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AK	Functions of supervisor	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AL	General requirement of composition	27 of 2004	01/01/2005
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### **Composition of incorporated management committee and office of managers**

- (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).

(PART IIIB added 27 of 2004 s. 16)

Section:	40AM	Nomination of sponsoring body manager	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AN	Nomination of teacher manager	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AO	Nomination of parent manager	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AP	Nomination of alumni manager	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AQ	Nomination of independent manager	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AR	Exemption from composition requirements	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AS	Provisions applicable to alternate managers	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AT	Endorsement of application for registration as manager	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AU	Filling of vacancies to maintain full composition	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AV	Parent manager or independent manager ceases to hold office under certain circumstances	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AW	Resignation, etc. of manager	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AX	Vacation of office of managers	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AY	Constitution of incorporated management committee	27 of 2004	01/01/2005
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### **Operation 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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40AZ	Delegation of functions	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BA	Permanent Secretary's nominee may attend meeting	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BB	Accounts of incorporated management committee	27 of 2004	01/01/2005
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(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).

(PART IIIB added 27 of 2004 s. 16)

Section:	40BC	Service of documents	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BD	Restrictions on execution of judgment by writ of fieri facias	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BE	Dissolution	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

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 Incorporation Ordinance (Cap 1098) who shall- (Amended L.N. 130 of 2007)
  - (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BF	Declaration of pecuniary or other personal interests annually	27 of 2004	01/01/2005
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**Provisions relating to managers**

(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BG	Disclosure of pecuniary or other personal interests	27 of 2004	01/01/2005
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(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.  
(PART IIIB added 27 of 2004 s. 16)

Section:	40BH	Register of interests	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BI	Rights and liability of manager and protection	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BJ	Establishment of incorporated management committee in respect of operating DSS school or specified school	27 of 2004	01/01/2005
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**Establishment of incorporated management committee: operating 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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BK	Submission for the purpose of establishment of incorporated management committee in respect of operating school	L.N. 112 of 2009	22/05/2009
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- (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 2011; (Amended L.N. 112 of 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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BL	Approval of draft constitution	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BM	Approval of list of proposed managers	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BN	Incorporation	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BO	Effect of certificate of incorporation	27 of 2004	01/01/2005
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A certificate of incorporation issued under section 40BN shall be conclusive evidence that the incorporated management committee is duly established under this Ordinance.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BP	Transitional provisions for establishment of incorporated management committee	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(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 may by notice published in the Gazette amend Schedule 1. (Amended L.N. 130 of 2007)

(PART IIIB added 27 of 2004 s. 16)

Section:	40BQ	Dissolution of school management company	27 of 2004	01/01/2005
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(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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BR	Transitional provisions for dissolution of school management company	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(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 may by notice published in the Gazette amend Schedule 2. (Amended L.N. 130 of 2007)

(PART IIIB added 27 of 2004 s. 16)

Section:	40BS	Failure to establish incorporated management committee	27 of 2004	01/01/2005
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(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).

(PART IIIB added 27 of 2004 s. 16)

Section:	40BT	Establishment of incorporated management committee in respect of planned DSS school	27 of 2004	01/01/2005
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**Establishment of incorporated management committee: planned 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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BU	Submission for the purpose of establishment of incorporated management committee in respect of planned school	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BV	Approval of draft constitution	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BW	Approval of list of proposed managers	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BX	Incorporation	27 of 2004	01/01/2005
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- (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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BY	Effect of certificate of incorporation	27 of 2004	01/01/2005
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A certificate of incorporation issued under section 40BX shall be conclusive evidence that the incorporated management committee is duly established under this Ordinance.

(PART IIIB added 27 of 2004 s. 16)

Section:	40BZ	Failure to establish incorporated management committee	27 of 2004	01/01/2005
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- (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).

(PART IIIB added 27 of 2004 s. 16)

Section:	40CA	Pre-incorporation contract	27 of 2004	01/01/2005
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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.

(PART IIIB added 27 of 2004 s. 16)

Section:	40CB	An aided IMC school may become a DSS school without IMC	27 of 2004	01/01/2005
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**Provisions applicable where a school ceases to be an IMC school**

- (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.

(PART IIIB added 27 of 2004 s. 16)

Part:	IIIC	PERMANENT SECRETARY MAY APPOINT MANAGERS*	27 of 2004	01/01/2005
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**Note:**

\* (Replaced 27 of 2004 s. 17)

Section:	41	Appointment of managers by Permanent Secretary	27 of 2004	01/01/2005
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- (1) If it appears to the Permanent Secretary- (Amended 3 of 2003 s. 11)
  - (a) that a school is not being managed satisfactorily or that the education of the pupils is not being promoted in a proper manner;
  - (b) that the composition of the management committee of a school is such that the school is not likely to be managed satisfactorily, or is such that the education of the pupils is not likely to be promoted in a proper manner; or
  - (c) that for any reason a school has no manager, (Added 61 of 1982 s. 4)
 he may appoint one or more persons to be managers of the school for such period as he thinks fit. (Amended 61 of 1982 s. 4)
- (2) A person who is appointed by the Permanent Secretary under subsection (1) to be a manager of a school- (Amended 3 of 2003 s. 11)
  - (a) shall be deemed to be registered as a manager of the school under section 29(1); (Amended 42 of 1993 s. 16)
  - (b) shall perform his functions in accordance with any directions given to him by the Permanent Secretary; and
  - (c) may enter the school premises at all reasonable times.
- (3) Notwithstanding subsections (1) and (2), no person who is appointed by the Permanent Secretary under subsection (1) to be a manager of a school shall participate in any of the profits of the school or shall be liable for any financial obligations incurred by the management committee or incorporated management committee (as may be appropriate) in respect of the operation of the school. (Amended 27 of 2004 s. 18)

(Amended 3 of 2003 s. 11)

Part:	IV	TEACHERS		30/06/1997
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Section:	42	Teachers to be registered or permitted teachers		30/06/1997
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### General

- (1) No person shall teach in a school unless he is-
  - (a) a registered teacher; or
  - (b) a permitted teacher.
- (2) No permitted teacher shall teach in a school otherwise than in accordance with the conditions or limitations specified in the permit to teach issued in respect of such teacher.

Section:	43	Permanent Secretary may require medical examination of proposed teacher	3 of 2003	28/02/2003
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The Permanent Secretary may, before registering a person as a teacher or issuing a permit to teach in respect of any person, require such person to undergo a medical examination.

(Amended 3 of 2003 s. 11)

Section:	44	Application for registration as a teacher	3 of 2003	28/02/2003
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### Registration of teachers

An application for registration as a teacher shall be-

- (a) made to the Permanent Secretary in the specified form; and (Amended 8 of 2001 s. 4; 3 of 2003 s. 11)
- (b) accompanied by the documents specified in such form.

Section:	45	Registration of teacher	3 of 2003	28/02/2003
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- (1) On receiving an application in accordance with section 44, the Permanent Secretary shall make such inquiry as he considers necessary and shall determine the application- (Amended 3 of 2003 s. 11)
  - (a) by registering the applicant as a teacher; or
  - (b) by refusing under section 46 to register the applicant as a teacher.
- (2) On registering an applicant as a teacher under subsection (1), the Permanent Secretary shall issue to the applicant a certificate of registration in the specified form. (Amended 8 of 2001 s. 4; Amended 3 of 2003 s. 11)

Section:	46	Grounds for refusal to register teacher	3 of 2003	28/02/2003
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The Permanent Secretary may refuse to register an applicant as a teacher if it appears to him that the applicant- (Amended 3 of 2003 s. 11)

- (a) is not a fit and proper person to be a teacher;
- (b) has been convicted of an offence punishable with imprisonment;
- (c) is a person in respect of whom a permit to teach has previously been cancelled;
- (d) is medically unfit;
- (e) does not possess the prescribed qualifications;
- (f) has attained the age of 70 years; or
- (g) in making or in connection with any application-
  - (i) (Repealed 42 of 1993 s. 17)
  - (ii) for registration as a manager or a teacher; or
  - (iii) to employ a person as a permitted teacher in a school, has made any statement or furnished any information which is false in any material particular or by

reason of the omission of any material particular.

Section:	47	Grounds for cancellation of registration of teacher	3 of 2003	28/02/2003
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The Permanent Secretary may cancel the registration of a teacher- (Amended 3 of 2003 s. 11)

- (a) on any ground specified in section 46 which applies to the teacher, whether or not such ground existed at the time when he was registered as a teacher;
- (b) if it appears to the Permanent Secretary that the teacher is incompetent;
- (c) if the teacher has contravened any provision of this Ordinance;
- (d) if it appears to the Permanent Secretary that the teacher has behaved in any manner which, in the opinion of the Permanent Secretary, constitutes professional misconduct; or
- (e) if it appears to the Permanent Secretary that the teacher has behaved in any manner which, in the opinion of the Permanent Secretary, is prejudicial to the maintenance of good order and discipline in the school in which the teacher teaches.

(Amended 3 of 2003 s. 11)

Section:	48	Circumstances in which application to employ permitted teacher may be made		30/06/1997
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#### Permitted teachers

An application to employ a person as a permitted teacher in a school may only be made if the applicant is of the opinion that no suitable registered teacher is available for employment as a teacher in the school.

Section:	49	Application to employ permitted teacher	27 of 2004	01/01/2005
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(1) An application to employ a person as a permitted teacher in a school shall be made to the Permanent Secretary- (Amended 3 of 2003 s. 11)

- (a) in the case of a school which is registered or provisionally registered, by the management authority; or (Amended 27 of 2004 s. 70)
- (b) in the case of a proposed school, by the applicant for registration of the school.

(2) An application to employ a person as a permitted teacher in a school shall be made in the specified form. (Amended 8 of 2001 s. 4)

Section:	50	Permit to teach	27 of 2004	01/01/2005
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(1) On receiving an application in accordance with section 49, the Permanent Secretary shall make such inquiry as he considers necessary and shall determine the application- (Amended 3 of 2003 s. 11)

- (a) by issuing to the management authority of the school concerned a permit in the specified form; or (Amended 8 of 2001 s. 4; 27 of 2004 s. 70)
- (b) by refusing under section 51 to issue such a permit.

(2) A permit to teach issued under subsection (1) shall specify the school in which the permitted teacher may be employed, and may impose such other conditions in respect of the employment of the permitted teacher in the school as the Permanent Secretary thinks fit.

(3) The Permanent Secretary shall, if he issues a permit to teach under subsection (1), also issue a copy of the permit to the permitted teacher.

(Amended 3 of 2003 s. 11)

Section:	51	Grounds for refusal to issue permit to teach	3 of 2003	28/02/2003
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(1) The Permanent Secretary may refuse to issue a permit to teach under section 50(1) in respect of any person- (Amended 21 of 2000 s. 3; Amended 3 of 2003 s. 11)

- (a) if in the opinion of the Permanent Secretary a suitable registered teacher is available for employment as a teacher in the school concerned;

- (b) on any ground specified in section 46(a), (b), (c), (d) or (f) which applies to the person in respect of whom the application is made;
- (c) if the person in respect of whom the application is made does not possess the prescribed qualification; or
- (d) if it appears to the Permanent Secretary that the applicant or the person in respect of whom the application is made has, in making or in connection with any application- (Amended 3 of 2003 s. 11)
  - (i) (Repealed 42 of 1993 s. 18)
  - (ii) for registration as a manager or a teacher; or
  - (iii) to employ a person as a permitted teacher in a school, made any statement or furnished any information which is false in any material particular or by reason of the omission of any material particular.

(2) Without prejudice to the generality of subsection (1), the Permanent Secretary shall refuse to issue a permit to teach for the employment of a person as a permitted teacher in an aided school if the person is prohibited from being so employed by virtue of section 58A. (Added 21 of 2000 s. 3)

(Amended 3 of 2003 s. 11)

Section:	52	Grounds for cancellation of permit to teach	3 of 2003	28/02/2003
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- (1) The Permanent Secretary may cancel a permit to teach- (Amended 3 of 2003 s. 11)
  - (a) on any ground specified in section 51(1)(b), (c) or (d) on which he would have been entitled to refuse to issue a permit to teach, whether or not such ground existed at the time when the permit was issued; or (Amended 21 of 2000 s. 4)
  - (b) on any ground specified in section 47(b), (c), (d) or (e) which applies to the permitted teacher.
- (2) A permit to teach shall be deemed to be cancelled-
  - (a) if the permitted teacher ceases to be employed in the school specified in the permit; or
  - (b) if the registration or provisional registration of the school specified in the permit is cancelled.

(3) Without prejudice to the generality of subsection (1) or (2), the Permanent Secretary shall cancel the permit to teach of a permitted teacher who is employed to teach in an aided school if the teacher is prohibited from continuing to be so employed by virtue of section 58A. (Added 21 of 2000 s. 4. Amended 3 of 2003 s. 11)

Section:	53	Approval of first principal of school	27 of 2004	01/01/2005
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### **Principals**

(1) Within 1 month after the registration or provisional registration of a school, the management committee or incorporated management committee (as may be appropriate) shall recommend for the approval of the Permanent Secretary a teacher of the school to be the principal. (Amended 27 of 2004 s. 19)

(2) Subject to section 54, the Permanent Secretary shall approve as the principal of the school the teacher who is recommended under subsection (1).

(Amended 3 of 2003 s. 11)

Section:	54	Grounds for refusal to approve principal	3 of 2003	28/02/2003
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(1) The Permanent Secretary may refuse to approve a teacher as the principal of a school if the Permanent Secretary is not satisfied that the teacher is a fit and proper person or, in the case of a school providing nursery or kindergarten education, appropriately qualified to be the principal of the school. (Amended 61 of 1982 s. 5; 38 of 1983 s. 3; 21 of 2000 s. 5)

(2) Without prejudice to the generality of subsection (1), the Permanent Secretary shall refuse to approve a teacher as the principal of an aided school if the teacher is prohibited from being employed as the principal of the school by virtue of section 58A. (Added 21 of 2000 s. 5)

(Amended 3 of 2003 s. 11)

Section:	55	Tenure of office of principal	3 of 2003	28/02/2003
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The principal of a school shall hold office until-

- (a) he ceases to be registered as a teacher, or to be permitted to teach as a permitted teacher in the school;
- (b) he resigns;
- (c) the Permanent Secretary withdraws his approval of the principal under section 56; or (Amended 3 of 2003 s. 11)
- (d) the Permanent Secretary approves another teacher of the school as the principal under section 57(2). (Amended 3 of 2003 s. 11)

Section:	56	Grounds for withdrawal of approval of principal	27 of 2004	01/01/2005
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(1) The Permanent Secretary may withdraw his approval of the principal of a school if it appears to the Permanent Secretary that the principal- (Amended 21 of 2000 s. 6; Amended 3 of 2003 s. 11)

- (a) is no longer a fit and proper person to be the principal;
- (aa) in the case of a school providing nursery or kindergarten education, is not appropriately qualified to be the principal; (Added 61 of 1982 s. 6. Amended 38 of 1983 s. 4)
- (b) is not performing the duties of the principal satisfactorily;
- (c) has ceased to perform the duties of the principal; or
- (d) is no longer acceptable as such to the majority of the managers of the school. (Amended 27 of 2004 s. 20)

(2) Without prejudice to the generality of subsection (1), the Permanent Secretary shall withdraw his approval of the principal of an aided school if the principal is prohibited from continuing to be employed as the principal of the school by virtue of section 58A. (Added 21 of 2000 s. 6. Amended 3 of 2003 s. 11)

Section:	57	Approval of subsequent principals	27 of 2004	01/01/2005
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(1) If in the case of any school-

- (a) the Permanent Secretary refuses under section 54 to approve a teacher who has been recommended to be the principal;
- (b) the principal ceased under section 55 to hold office;
- (c) the principal ceases to perform the duties of the principal; or
- (d) the principal is no longer acceptable as such to the majority of the managers of the school,

the management committee or incorporated management committee (as may be appropriate) of the school shall within 1 month recommend for the approval of the Permanent Secretary another teacher of the school to be the principal. (Amended 27 of 2004 s. 21)

(2) Subject to section 54, the Permanent Secretary shall approve as the principal of the school the teacher who is recommended under subsection (1).

(Amended 3 of 2003 s. 11)

Section:	57A	Selection of principal of IMC school	27 of 2004	01/01/2005
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(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.

(Added 27 of 2004 s. 22)

Section:	58	Functions of principal	27 of 2004	01/01/2005
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(1) The principal of a school shall, subject to the directions of the management committee or incorporated management committee (as may be appropriate), be responsible for the teaching and discipline of the school and for such purposes shall have authority over the teachers and pupils of the school. (Amended 27 of 2004 s. 23)

(2) The Permanent Secretary may address the principal of a school on any matter relating to the teaching and discipline in the school, and in such case the principal shall conduct correspondence directly with the Permanent Secretary. (Amended 3 of 2003 s. 11)

Section:	58AA	Performance of functions of principal by candidate	27 of 2004	01/01/2005
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(1) A teacher who is not a principal of a school and who has been recommended under section 53(1) or 57(1) for approval to be the principal of the school may, as long as he is a registered teacher or permitted teacher, perform the functions of the principal until the recommendation-

- (a) is approved under section 53(2) or 57(2), as the case may be; or
- (b) is refused under section 54.

(2) A teacher performing any function of a principal under subsection (1) shall be regarded for the purposes of this Ordinance (except sections 40AL(2)(b), 55 and 56) as the principal. (Amended 27 of 2004 s. 24)

(Added 8 of 2001 s. 6)

Section:	58A	Prohibition against employment of persons of specified age as teachers or principals of aided schools	3 of 2003	28/02/2003
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#### Teachers and principals of aided schools

(1) Subject to subsection (2)-

- (a) a person shall not be employed as a teacher or the principal of an aided school if he-
  - (i) would commence such employment after the commencement of this section; and
  - (ii) would be aged 60 years or more at the commencement of such employment;
- (b) a person employed as a teacher or the principal of an aided school shall not continue to be so employed for a school year or any part thereof if he has attained the age of 60 years or more before the commencement of the school year, except in accordance with a permission under section 58B(2)(a).

(2) Nothing in subsection (1) applies to-

- (a) the employment of a person as a temporary replacement of a teacher of an aided school for any period during which that teacher is unable for any reason to perform his duties as a teacher of the school; or
- (b) the employment of a person as a teacher of an aided school where the person fills a post that is not within the teaching staff establishment of the school approved by the Permanent Secretary from time to time. (Amended 3 of 2003 s. 11)

(Added 21 of 2000 s. 7)

Section:	58B	Application for permission to continue to employ serving teachers or principals of aided schools	27 of 2004	01/01/2005
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(1) The management committee or incorporated management committee (as may be appropriate) of an aided school may make an application in writing to the Permanent Secretary for permission to continue to employ a teacher of the school as a teacher or the principal of the school as the principal, in either case for a period of not more than one school year, where the teacher or principal- (Amended 3 of 2003 s. 11; 27 of 2004 s. 25)

- (a) is otherwise prohibited from continuing to be so employed by virtue of section 58A(1)(b); and
- (b) is serving as a teacher or the principal of the school (as the case may be) immediately before the commencement of the period concerned.

(2) As soon as reasonably practicable after the receipt of an application under subsection (1), the Permanent Secretary shall, subject to subsection (3), determine the application by- (Amended 3 of 2003 s. 11)

- (a) issuing to the management committee or incorporated management committee (as may be appropriate) of the school concerned permission in writing to continue to employ the teacher or principal for the period specified in the application or for such other period (being not more than one school year) as the Permanent Secretary thinks fit; or (Amended 3 of 2003 s. 11; 27 of 2004 s. 25)
- (b) refusing to issue such permission.

(3) The maximum aggregate period for which permission may be issued under subsection (2)(a) in respect of the teacher or principal shall be 5 consecutive school years.

(Added 21 of 2000 s. 7)

Section:	58C	Meaning of "school year"	21 of 2000	24/03/2000
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For the purposes of sections 58A and 58B, "school year" (學年) means any period after the first anniversary of the commencement of this section that begins on the first day of September in a year and ends on the last day of August in the following year.

(Added 21 of 2000 s. 7)

Part:	V	APPEALS	L.N. 18 of 2004	01/04/2004
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Section:	59	Appeal Boards Panel	L.N. 18 of 2004	01/04/2004
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(1) For the purposes of this Part, the Chief Executive shall by notice published in the Gazette appoint-

- (a) a panel of persons ("the Appeal Boards Panel") whom he considers suitable for appointment as members of an Appeal Board;
- (b) a member of the Appeal Boards Panel as the Chairman of the Appeal Boards Panel;
- (c) one or more members of the Appeal Boards Panel as Deputy Chairmen of the Appeal Boards Panel as he thinks fit; and
- (d) a person to be the secretary of the Appeal Boards Panel.

(2) A person appointed under subsection (1) shall hold office for such period as may be specified in such notice and may resign his office at any time by notice in writing to the Chief Executive.

(3) The Appeal Boards Panel may, subject to any other provision in this Part, regulate its own procedure and the procedure for appeals and make standing orders for those purposes.

(4) An Appeal Board may at its request be assisted in the conduct of an appeal by a legally qualified person appointed by the Secretary for Justice to act as legal advisor.

(5) In this section, "legally qualified" (具有法律專業資格) means qualified to practise as a legal practitioner in Hong Kong.

(Replaced 1 of 2004 s. 5)

**Note:**

For saving provisions relating to the amendments made by section 5 of 1 of 2004, please see section 14 of the Education (Miscellaneous Amendments) Ordinance 2004 (1 of 2004), which is reproduced as follows—

**"14. Saving regarding Appeals Board**

**(1) Notwithstanding anything in this Ordinance—**

- (a) any person who was a member of the former Appeals Board immediately before the commencement date is deemed to be a member of the Appeal Boards Panel for a period equal to the term of his office that would have remained had this Ordinance not been enacted, or until he ceases to be so for any reason before expiry of the period;**
- (b) the person who was the Chairman of the former Appeals Board immediately before the commencement date is deemed to be the Chairman of the Appeal Boards Panel for a period equal to the term of his office that would have remained had this Ordinance not been enacted, or until he ceases to be so for any reason before expiry of the period;**
- (c) an Appeal Board which consists of members and the Chairman referred to in paragraphs (a) and (b) or includes the Chairman or any such member is deemed to be a properly constituted Appeal Board for the purposes of the Amended Ordinance.**

**(2) All pending appeals proceedings before the former Appeals Board which have not been disposed of on the commencement date are to continue and be disposed of as if this Ordinance had not been enacted.**

**(3) Notwithstanding anything in this Ordinance, the validity of any proceedings before an Appeal Board is not affected by the inclusion in the Appeal Board of a member or the Chairman of the former Appeals Board serving for the period as provided in subsection (1)(a) or (b), as the case may be.**

**(4) This section is in addition to and not in derogation from section 23 of the Interpretation and General Clauses Ordinance (Cap 1).**

**(5) In this section—**

**"Amended Ordinance" (經修訂條例) means the Education Ordinance (Cap 279) as amended by this Ordinance;**

**"Appeal Board" (上訴委員會) means an Appeal Board appointed under section 62(1)(aa) of the Amended Ordinance;**

**"Appeal Boards Panel" (上訴委員團) means the Appeal Boards Panel appointed under section 59(1)(a) of the Amended Ordinance;**

**\*"commencement date" (生效日期) means the date appointed by the Secretary for Education and Manpower for the commencement of section 5 of this Ordinance under section 1(2) of this Ordinance;**

**"former Appeals Board" (前上訴委員會) means the Appeals Board appointed under section 59 of the Education Ordinance (Cap 279) in force immediately before the commencement date."**

**\* Commencement date: 1 April 2004.**

Section:	60	Permanent Secretary to serve notice of decision on person adversely affected	27 of 2004	01/01/2005
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(1) Subject to subsection (2), if the Permanent Secretary has made a decision by exercising any power conferred on him under a provision specified in the First Column of the Table contained in this section, he shall serve notice in writing of his decision on the persons specified in relation thereto in the Second Column of the Table, stating the grounds for his decision, and shall supply to the person a copy of this Part.

TABLE

First Column	Second Column
Section 14.	Applicant.
Section 20(5)(b).	Management authority.
Section 22(1).	Management authority.
Section 30(1) or (1A).	Applicant.
Section 31(1).	Manager concerned.
Section 35(1).	Person recommended to be supervisor.
Section 37.	Manager ceasing to be supervisor.
Section 40AY.	Incorporated management committee. (Added 27 of 2004 s. 26)

Section 40BL.	Sponsoring body. (Added 27 of 2004 s. 26)
Section 40BM.	Sponsoring body. (Added 27 of 2004 s. 26)
Section 40BS(1)(c).	Sponsoring body. (Added 27 of 2004 s. 26)
Section 40BS(1)(d).	Manager concerned. (Added 27 of 2004 s. 26)
Section 40BV.	Sponsoring body. (Added 27 of 2004 s. 26)
Section 40BW.	Sponsoring body. (Added 27 of 2004 s. 26)
Section 40BZ.	Sponsoring body. (Added 27 of 2004 s. 26)
Section 46.	Applicant.
Section 47.	Teacher concerned.
Section 51(1).	Management authority.
Section 52(1).	Management authority.
Section 54(1).	Management authority.
Section 56(1).	Management authority.
Section 58B(2)(b).	Management authority. (Added 21 of 2000 s. 8) (Amended 27 of 2004 s. 26)

(2) If an order is made under section 9(3) or (5) exempting a school from section 10, subsection (1) of this section shall not apply in respect of-

- (a) a refusal by the Permanent Secretary under section 30(1) to register any person as a manager of the school;
- (b) the cancellation by the Permanent Secretary under section 31(1) of the registration of any manager of the school;
- (c) a refusal by the Permanent Secretary under section 35(1) to approve any person as the supervisor of the school;
- (d) the withdrawal by the Permanent Secretary under section 37 of the approval of any supervisor of the school;
- (e) a refusal by the Permanent Secretary under section 51(1) to issue a permit to teach for the employment of any person as a permitted teacher in the school;
- (f) the cancellation by the Permanent Secretary under section 52(1) of the permit to teach of any permitted teacher who is employed to teach in the school;
- (g) a refusal by the Permanent Secretary under section 54(1) to approve any teacher as the principal of the school; or
- (h) the withdrawal under section 56(1) of the approval of any principal of the school.

(Amended 42 of 1993 s. 19; 21 of 2000 s. 8; 3 of 2003 s. 11)

Section:	61	Right of appeal to Appeal Board	L.N. 18 of 2004	01/04/2004
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(1) A person on whom a notice is served under section 60(1) may, within 21 days after the service of the notice, appeal to an Appeal Board against the decision of the Permanent Secretary referred to in the notice, by delivering in duplicate to the secretary of the Appeal Boards Panel a notice of appeal in accordance with subsection (2). (Amended 1 of 2004 s. 6)

(2) Every notice of appeal shall be in writing and shall specify-

- (a) the decision of the Permanent Secretary in respect of which the appeal is brought; and
- (b) the grounds on which the appeal is brought.

(Amended 3 of 2003 s. 11)

Section:	62	Procedure on appeal	L.N. 18 of 2004	01/04/2004
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(1) On receiving a notice of appeal in accordance with section 61, the secretary of the Appeal Boards Panel shall- (Amended 1 of 2004 s. 7)

- (a) forthwith forward one copy of the notice of appeal to the Permanent Secretary;
- (aa) appoint an Appeal Board in accordance with subsections (1A) and (1B) to hear and determine the appeal; (Added 1 of 2004 s. 7)
- (b) fix a time and place for the hearing of the appeal by the Appeal Board; and (Amended 1 of 2004 s. 7)
- (c) give the appellant and the Permanent Secretary not less than 14 days notice of the time and place fixed for the hearing of the appeal.

(1A) An Appeal Board shall consist of 5 members of the Appeal Boards Panel, who shall be-

- (a) the Chairman or a Deputy Chairman of the Appeal Boards Panel; and
- (b) 4 other members of the Appeal Boards Panel. (Added 1 of 2004 s. 7)

(1B) Where an Appeal Board hears or determines any appeal concerning the registration of a teacher or the cancellation of the registration of a teacher, at least 3 of its members must be registered teachers. (Added 1 of 2004 s. 7)

(1C) If a member of an Appeal Board is precluded by illness, incapacity, absence from Hong Kong or any other cause from exercising his functions, the secretary of the Appeal Boards Panel may appoint any other person from the Panel to act in the place of that member. (Added 1 of 2004 s. 7)

(2) On receiving a copy of a notice of appeal under subsection (1), the Permanent Secretary shall forthwith forward to the secretary of the Appeal Boards Panel a copy of the notice which has been served on the appellant under section 60(1). (Amended 1 of 2004 s. 7)

(2A) The Chairman or a Deputy Chairman of the Appeal Boards Panel appointed as a member to an Appeal Board shall preside at the hearing of an appeal by the Appeal Board. (Added 1 of 2004 s. 7)

(3) At the hearing of an appeal, the appellant or his authorized representative, and the Permanent Secretary or any person appointed by him for such purpose, shall be entitled to be present and to be heard on the appeal.

(4) The hearing of an appeal may at the discretion of the Appeal Board be open to the public or in camera, or partly open to the public and partly in camera. (Amended 1 of 2004 s. 7)

(5) The hearing of an appeal may, with the consent of the appellant and the Permanent Secretary, be continued notwithstanding a change in the membership of the Appeal Board by virtue of subsection (1C). (Replaced 1 of 2004 s. 7)

(6) An Appeal Board may hear and determine an appeal in the absence of the appellant or the Permanent Secretary if due notice of the hearing of the appeal has been given to both of the parties. (Amended 1 of 2004 s. 7)

(7) The onus of proving that the grounds stated by the Permanent Secretary under section 60(1) for his decision are not correct, or do not justify the decision, shall be upon the appellant.

(8) Except with the permission of the Appeal Board, neither the appellant nor the Permanent Secretary may rely at the hearing of an appeal on any grounds other than those stated by the Permanent Secretary in the notice served on the appellant under section 60(1), and those specified by the appellant in the notice of appeal. (Amended 1 of 2004 s. 7)

(Amended 3 of 2003 s. 11)

Section:	63	Witnesses and inspections	L.N. 18 of 2004	01/04/2004
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(1) For the purposes of hearing an appeal, an Appeal Board may- (Amended 1 of 2004 s. 8)

- (a) subject to subsection (4), hear and examine witnesses on oath;
- (b) subject to subsection (4), summon any person to attend any hearing of the Appeal Board to give evidence or produce any document or other thing in his possession and examine him as a witness or require him to produce any document or other thing in his possession; (Amended 1 of 2004 s. 8)
- (c) order an inspection of any premises;
- (d) enter and view any premises.

(2) A summons under subsection (1) shall be in such form as the chairman of the Appeal Boards Panel shall direct and shall be signed by the Chairman (or a Deputy Chairman if the Chairman is absent) and the secretary of the Appeal Boards Panel. (Amended 1 of 2004 s. 8)

(3) Subject to subsection (4), any person who-

- (a) being summoned under subsection (1) to attend any hearing of an Appeal Board to give evidence or to produce any document or other thing in his possession, refuses or neglects to do so; or (Amended 1 of 2004 s. 8)
- (b) being examined under subsection (1) as a witness by or before an Appeal Board, refuses or neglects to answer any question put to him by or with the concurrence of the Appeal Board, or to produce any document or other thing in his possession when required to do so, (Amended 1 of 2004 s. 8)

shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months. (Amended 47 of 1990 s. 5; L.N. 205 of 2000)

(4) Every person who appears as a witness before an Appeal Board shall be entitled to the same privileges in respect of the giving of evidence and the production of any document and other thing as he would be entitled to if appearing as a witness in civil proceedings before the Court of First Instance. (Amended 25 of 1998 s. 2; 1 of 2004 s.

8)

(5) Any person who-

(a) behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of an Appeal Board; or (Amended 1 of 2004 s. 8)

(b) wilfully disrupts the proceedings of an Appeal Board, (Amended 1 of 2004 s. 8)

shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months. (Amended 47 of 1990 s. 5; L.N. 205 of 2000)

Section:	64	Decision of Appeal Board	L.N. 18 of 2004	01/04/2004
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(1) On the hearing of an appeal, an Appeal Board may confirm, reverse or vary the decision of the Permanent Secretary appealed against, and shall state its reasons for its decision.

(2) The secretary of the Appeal Boards Panel shall serve on the appellant and the Permanent Secretary notice in writing of the decision of the Appeal Board together with the reasons of the Appeal Board for its decision.

(Amended 3 of 2003 s. 11; 1 of 2004 s. 9)

Section:	65	Further right of appeal to Chief Executive in Council	L.N. 18 of 2004	01/04/2004
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The Permanent Secretary or the appellant may within 14 days after being served under section 64(2) with a notice of the decision of an Appeal Board appeal by way of petition to the Chief Executive in Council.

(Amended 3 of 2003 s. 11; 1 of 2004 s. 10)

Section:	66	Permission to operate school or to act etc. pending appeal	27 of 2004	01/01/2005
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(1) Notwithstanding any other provision in this Ordinance, the Permanent Secretary may on such conditions, if any, as he thinks fit- (Amended 3 of 2003 s. 11)

(a) by notice in writing to the management authority permit a school to continue to operate after the registration or provisional registration of the school has been cancelled under section 22(1);

(b) by notice in writing to a manager of a school permit him to continue to be a manager of the school after his registration as a manager of the school has been cancelled under section 31(1); (Amended 42 of 1993 s. 20)

(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); (Added 27 of 2004 s. 27)

(c) by notice in writing to a registered teacher permit him to continue to teach after his registration as a teacher has been cancelled under section 47; (Amended 21 of 2000 s. 9)

(d) by notice in writing to the management authority of a school permit a permitted teacher to continue to be employed as a teacher in the school after the permit to teach issued in respect of such teacher has been cancelled under section 52(1); or (Amended 21 of 2000 s. 9)

(e) by notice in writing to the management authority of an aided school permit a person in respect of whom permission has been refused under section 58B(2)(b) to continue to be employed as a teacher or the principal of the school. (Added 21 of 2000 s. 9. Amended 27 of 2004 s. 70)

(2) Any permission given by the Permanent Secretary under subsection (1) shall remain in force- (Amended 3 of 2003 s. 11)

(a) until-

(i) the expiry of the time specified in section 61(1) for the bringing of an appeal to an Appeal Board against the decision of the Permanent Secretary; and (Amended 1 of 2004 s. 11)

(ii) the determination of any appeal brought under section 61 to an Appeal Board against the decision of the Permanent Secretary; and (Amended 1 of 2004 s. 11)

(b) if an appeal is brought under section 61 to an Appeal Board against the decision of the Permanent Secretary, until- (Amended 3 of 2003 s. 11; 1 of 2004 s. 11)

(i) the expiry of the time specified in section 65 for the bringing of a further appeal to the Chief Executive in Council against the decision of an Appeal Board; and (Amended 1 of 2004 s. 11)

(ii) the determination of any further appeal brought under section 65 to the Chief Executive in Council against the decision of an Appeal Board; and (Amended 55 of 2000 s. 3; 1 of 2004 s.

11)

- (c) in special circumstances, until such later date as the Permanent Secretary may specify. (Amended 3 of 2003 s. 11)

Part:	VI	ADDITIONAL PROVISIONS AS TO REGISTRATION, APPROVALS AND PERMITS TO TEACH	3 of 2003	28/02/2003
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Section:	67	Permanent Secretary may require interview or further information	3 of 2003	28/02/2003
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If an application is made for-

- (a) the registration of a school;
- (b) (Repealed 42 of 1993 s. 21)
- (c) registration as a manager or a teacher; or
- (d) to employ a person as a permitted teacher in a school,

the Permanent Secretary may require the applicant or the proposed permitted teacher- (Amended 3 of 2003 s. 11)

- (i) to attend an interview with such person as the Permanent Secretary may specify; or
- (ii) to make any declaration or to supply any further particulars that the Permanent Secretary considers necessary in connection with the application.

(Amended 3 of 2003 s. 11)

Section:	68	(Repealed 42 of 1993 s. 22)		30/06/1997
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Section:	69	(Repealed 42 of 1993 s. 22)		30/06/1997
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Section:	70	(Repealed 42 of 1993 s. 22)		30/06/1997
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Section:	71	Return of invalid certificates and permits	3 of 2003	28/02/2003
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Notwithstanding any other provision in this Ordinance, if-

- (a) a school ceases to be registered or provisionally registered;
- (b) (Repealed 42 of 1993 s. 23)
- (c) a person ceases to be registered as a manager or a teacher; or
- (d) a person ceases to be a permitted teacher,

every person who has in his possession any certificate or copy of a certificate relating to such registration, provisional registration or, in the case referred to in paragraph (d), the permit to teach or a copy of the permit to teach issued in respect of the permitted teacher, shall within one month after being required to do so by the Permanent Secretary deliver such document to the Permanent Secretary.

(Amended 42 of 1993 s. 23; 3 of 2003 s. 11)

Section:	72	Restrictions on entry into school premises	3 of 2003	28/02/2003
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(1) If the registration or provisional registration of a school has been cancelled under section 22, no person who has at any time been a manager, teacher or pupil of the school shall enter or remain in any premises- (Amended 42 of 1993 s. 24)

- (a) in which the school was operated; and
- (b) which are being used for the purposes of a school,

without the permission in writing of the Permanent Secretary.

(2) No person shall, without the permission in writing of the Permanent Secretary, enter or remain in any school- (Amended 3 of 2003 s. 11)

- (a) if at any time-
  - (i) (Repealed 42 of 1993 s. 24)
  - (ii) he has been refused registration as a manager or a teacher, or having been so registered has had his registration cancelled;
  - (iii) a permit to teach has been refused in respect of such person;
  - (iv) he has been a permitted teacher in respect of whom a permit to teach has been cancelled; or
  - (v) he has been refused approval as the supervisor or principal of a school, or having been so approved has had such approval withdrawn; or
- (b) (Repealed 42 of 1993 s. 24)

(3) The Permanent Secretary may attach to any permission given under this section such conditions as he thinks fit.

(Amended 3 of 2003 s. 11)

Section:	72A	Sponsoring body's views take priority over management committee's	27 of 2004	01/01/2005
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(1) Where the Permanent Secretary has approved a sponsoring body for a particular school without IMC, in exercising his powers under sections 30(2), 31(2)(a), 37(d), 38(2) and 38A(2) in respect of such a school, the Permanent Secretary shall, in addition to taking account of the views of the management committee, also take account of the views of the sponsoring body, but nothing in this section shall impose a duty on the Permanent Secretary to seek the views of the sponsoring body. (Amended 27 of 2004 s. 28)

(2) The views of the sponsoring body shall be expressed by resolution of its board, or other governing body as established by its constitution, and a copy of the resolution shall be sent to the Permanent Secretary.

(3) A sponsoring body may express its views on a matter relating to the provisions referred to in subsection (1) whether or not the management committee of the school has expressed its views on the matter and, where the management committee has expressed its views on the matter, the views of the sponsoring body shall prevail.

(Added 42 of 1993 s. 25. Amended 3 of 2003 s. 11)

Part:	VII	POWER OF PERMANENT SECRETARY TO ORDER ATTENDANCE AT A PRIMARY OR SECONDARY SCHOOL*	3 of 2003	28/02/2003
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**Note:**

\* (Amended 34 of 1979 s. 3; 3 of 2003 s. 8)

Section:	73	Interpretation of Part VII	3 of 2003	28/02/2003
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In this Part-

"attendance order" (入學令) means an order made under section 74;

"parent" (家長) in relation to any child to whom section 74 applies includes a guardian and the person having the actual custody of the child.

(Amended 34 of 1979 s. 4; 8 of 2001 s. 7)

Section:	74	Power of Permanent Secretary to order attendance at primary school or secondary school	27 of 2004	01/01/2005
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(1) Where it appears to the Permanent Secretary that a child is not attending primary school or secondary school without any reasonable excuse, the Permanent Secretary may, after making such inquiries as he considers necessary, serve upon a parent of the child an attendance order in the specified form requiring him to cause the child to attend regularly as a pupil the primary school or secondary school named in the attendance order. (Amended 34 of 1979 s. 5; 47 of 1990 s. 6; 8 of 2001 s. 4)

(2) The Permanent Secretary may at any time, by notice in writing served upon a parent of the child to whom an attendance order relates- (Amended 3 of 2003 s. 11)

(a) vary the order by substituting another primary school or secondary school for that named in the order; (Amended 34 of 1979 s. 5)

(b) otherwise vary or withdraw the order,

and any variation of an attendance order shall take effect on the expiry of the period of 14 days after the date of service of the notice in writing.

(2A)The Permanent Secretary may at any time, by notice in writing served upon the management committee or incorporated management committee (as may be appropriate) of a primary school or secondary school named in an attendance order, require the committee to admit to that school as a pupil the child to whom the attendance order relates. (Added 47 of 1990 s. 6. Amended 27 of 2004 s. 29)

(2B)No person shall, without the permission in writing of the Permanent Secretary, expel from a primary school or secondary school named in an attendance order the child to whom the attendance order relates and who has been admitted to that school as a pupil in accordance with that order. (Added 47 of 1990 s. 6)

(3) This section shall-

(a)-(b) (Repealed 47 of 1990 s. 6)

(c) not apply to a child- (Amended 47 of 1990 s. 6)

(i) who has completed Form III of secondary education and whose parent can produce evidence to that effect to the satisfaction of the Permanent Secretary;

(ii) who is a registered apprentice under the Apprenticeship Ordinance (Cap 47); or

(iii) who is attending regularly, or is an inmate of, an institution (other than a school) which is regarded by the Permanent Secretary as suitable for the child. (Added 34 of 1979 s. 5)

(Amended 3 of 2003 s. 11)

Section:	74A	Appeals	L.N. 90 of 2001	01/06/2001
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Remarks:

Sections 75, 76 and 77 were repealed and section 74A substituted by 8 of 2001. For related transitional provisions, see section 16 of 8 of 2001.

A parent aggrieved by-

(a) an attendance order; or

(b) any variation of an attendance order under section 74(2),

made in respect of him may appeal to the Administrative Appeals Board.

(Added 8 of 2001 s. 8)

Section:	75	(Repealed 8 of 2001 s. 8)	L.N. 90 of 2001	01/06/2001
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Section:	76	(Repealed 8 of 2001 s. 8)	L.N. 90 of 2001	01/06/2001
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Section:	77	(Repealed 8 of 2001 s. 8)	L.N. 90 of 2001	01/06/2001
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Section:	78	Enforcement of order	L.N. 90 of 2001	01/06/2001
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Any parent who without reasonable excuse fails to comply with an attendance order (as the same may be varied from time to time) shall be guilty of an offence and shall be liable on conviction to a fine at level 3 and to imprisonment for 3 months: (Amended 47 of 1990 s. 8; L.N. 205 of 2000)

Provided that if an appeal is made against an attendance order or a variation of an attendance order under section 74A, no offence shall be committed by reason of a failure to comply with the attendance order or the attendance order as varied, as the case may be, until the appeal has been disposed of, withdrawn or abandoned. (Amended 8 of 2001 s. 9)

Part:	VIII	INSPECTION OF SCHOOLS	L.N. 130 of 2007	01/07/2007
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Section:	79	Appointment of inspectors	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

The Chief Executive may by notice in the Gazette appoint by name or office- (Amended 55 of 2000 s. 3)

- (a) any officer of the Education Bureau to be an inspector of schools; (Amended 3 of 2003 s. 9; L.N. 130 of 2007)
- (b) any Government medical officer to be a medical officer of schools; and
- (c) any health inspector to be a health inspector of schools.

Section:	80	Inspection of schools	3 of 2003	28/02/2003
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The Permanent Secretary and any inspector of schools may inspect any school for the purposes of ascertaining whether this Ordinance is being complied with and whether the school is being conducted satisfactorily.

(Amended 3 of 2003 s. 11)

Section:	81	Powers of inspectors	3 of 2003	28/02/2003
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The Permanent Secretary and any inspector of schools may, for the purposes of section 80- (Amended 3 of 2003 s. 11)

- (a) at all reasonable times enter the premises of any school;
- (b) enter any premises in which he has reason to suspect that an offence against this Ordinance has been or is being committed;
- (c) require any manager or teacher of a school to produce any book, document or other article relating to the management of the school, or to the teaching in or any other activity of the school, or to furnish any information relating to such management, teaching or activity;
- (d) remove for further examination any book, document or other article which he has reason to suspect is evidence of the commission of an offence against this Ordinance, or for the cancellation of the registration of any school, manager or teacher, or for the cancellation of the provisional registration of any school, or for the cancellation of any permit to teach; and (Amended 42 of 1993 s. 26)
- (e) do such other things as are necessary for the inspection of a school.

Section:	81A	Inspection of premises in the case of unregistered schools	3 of 2003	28/02/2003
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(1) The Permanent Secretary and any inspector of schools may enter and inspect any premises which the Permanent Secretary has reason to suspect are being used for the purposes of a school which is not registered or provisionally registered.

(1A) The Permanent Secretary and any inspector of schools may, for the purposes of this section- (Amended 3 of 2003 s. 11)

- (a) require any person apparently in charge of the premises to produce any book, document or other article relating to the management of any business being carried on on the premises or to furnish any information relating to such management or business; and
  - (b) remove for further examination any book, document or other article which he has reason to suspect is evidence of the commission of an offence against this Ordinance. (Added 42 of 1993 s. 27)
- (2) If the Permanent Secretary or any inspector of schools- (Amended 3 of 2003 s. 11)
- (a) is obstructed by any person while he is carrying out, or attempting to carry out, an inspection of any premises referred to in subsection (1); or
  - (b) has reason to suspect that he is likely to be so obstructed in carrying out, or attempting to carry out, such an inspection,

the Permanent Secretary or inspector, as the case may be, may apply to a magistrate under subsection (3) for a warrant to enter and inspect those premises.

(3) A magistrate may issue a warrant authorizing the Permanent Secretary or any inspector of schools, with such assistance from members of the Fire Services Department as may be necessary, to enter and inspect any premises referred to in subsection (1) if he is satisfied by information on oath that there are reasonable grounds for suspecting that those premises are being used for the purposes of a school which is not registered or provisionally registered. (Amended 42 of 1993 s. 27; Amended 3 of 2003 s. 11)

(4) A warrant issued by a magistrate under subsection (3) may authorize the Permanent Secretary or any inspector of schools, together with any members of the Fire Services Department, to- (Amended 42 of 1993 s. 27)

- (a) enter those premises, if necessary by force;
  - (b) remain on those premises for such time or times as may be specified in the warrant;
  - (c) re-enter those premises from time to time or on such day or days as may be specified in the warrant.
- (Added 47 of 1990 s. 9. Amended 3 of 2003 s. 11)

Section:	81B	Power to request personal particulars	3 of 2003	28/02/2003
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Where the Permanent Secretary or any inspector of schools enters any premises under section 81(b) or 81A(1) or (3), he may, for the purposes for which he enters the premises, require any person found in the premises whom he reasonably believes to be guilty of an offence under this Ordinance to- (Amended 3 of 2003 s. 11)

- (a) furnish to him for his inspection the person's proof of identity; and
  - (b) furnish to him the person's residential address and contact telephone number.
- (Added 8 of 2001 s. 10)

Section:	82	Power of Permanent Secretary to direct remedial measures	27 of 2004	01/01/2005
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(1) The Permanent Secretary may, if it appears to him that- (Amended 3 of 2003 s. 11)

- (a) a school is not being managed satisfactorily;
- (b) the education of the pupils of a school is not being promoted in a proper manner; or
- (c) any provision of this Ordinance is being or has been contravened in respect of a school,

by notice in writing give such directions as he thinks necessary in order that the school will be operated satisfactorily, or that the education of the pupils of the school will be promoted in a proper manner, or that such provision of this Ordinance will be complied within in respect of the school.

(2) Any notice under subsection (1)-

- (a) may be served on the management authority and every manager of the school concerned; and (Amended 27 of 2004 s. 30)
- (b) may specify a period of time within which the directions shall be complied with.

Section:	83	Powers of Permanent Secretary to close school or give directions in cases of danger or misconduct	27 of 2004	01/01/2005
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(1) The Permanent Secretary may, if it appears to him that- (Amended 3 of 2003 s. 11)

- (a) there is any danger or risk of danger to persons in any school premises;
- (b) the conduct of the managers, teachers or pupils of a school is or has been unsatisfactory; or
- (c) any provision of this Ordinance is being or has been contravened in respect of a school,

by order in writing served on the management authority of the school- (Amended 27 of 2004 s. 31)

- (i) suspend the operation of the school in the school premises, or any part of the school premises, for such period as he thinks fit or until further notice; (Amended 47 of 1980 s. 2)
- (ii) prohibit the use of any place for the purposes of a school for such period as he thinks fit or until further notice; or
- (iii) give such directions and make such requirements as he thinks necessary.

(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. (Added 27 of 2004 s. 31)

(1A) Notwithstanding subsection (1), if it appears to the Permanent Secretary that there is any immediate danger or immediate risk of danger to persons in any school premises due to bad weather, he may, by making public

announcements on radio, television or newspapers or by such other means as he thinks fit, suspend the operation of the school in the school premises. (Added 8 of 2001 s. 11)

(2) The Permanent Secretary may, if any direction or requirement given or made by him under subsection (1)(iii) has not been complied with to his satisfaction, by order in writing-

(a) suspend the operation of the school in the school premises, or any part of the school premises; or (Amended 47 of 1980 s. 2)

(b) prohibit the use of any place for the purposes of the school, until the direction or requirement is so complied with.

(3) The Permanent Secretary may by order in writing close any premises of a school which is not registered or provisionally registered.

(4) The Permanent Secretary may, if a school is operated in any premises which are not specified in the certificate of registration or provisional registration of the school, by order in writing close such premises.

(5) An order made by the Permanent Secretary under subsection (1)(i) or (ii) or subsection (2), (3) or (4) shall be published in the Gazette.

(6) No person shall enter or remain in-

(a) any premises or any part of any premises in which the operation of a school has been suspended under subsection (1), (1A) or (2); (Replaced 47 of 1980 s. 2. Amended 8 of 2001 s. 11)

(aa) any premises or any part of any premises which have been closed under subsection (3) or (4); or (Added 47 of 1980 s. 2)

(b) any place the use of which for the purposes of a school has been prohibited by the Permanent Secretary under subsection (1) or (2),

unless-

(i) he is a public officer acting in the course of his duty; or

(ii) the Permanent Secretary has given him permission in writing to do so. (Amended L.N. 162 of 1993)  
(Amended 3 of 2003 s. 11)

Part:	IX	GENERAL PROVISIONS	27 of 2004	01/01/2005
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Section:	84	Regulations	27 of 2004	01/01/2005
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(1) The Chief Executive in Council may make regulations providing for- (Amended 55 of 2000 s. 3)

(a) the structure, hygiene and sanitation of school premises;

(b) the precautions to be taken against fire or other peril likely to endanger the lives or health of pupils, and the authorizing of officers of the Fire Services Department to enter and inspect school premises and premises in which schools are situate and premises in the neighbourhood of schools;

(c) the control of entrance to and exits from school premises; (Amended L.N. 162 of 1993)

(d) the operation of schools in premises which, by reason of the loading for which they were designed and constructed, are unsuitable for the purposes of a school;

(e) the health inspection of schools and school premises and standards of hygiene to be maintained by schools;

(f) the medical examination of teachers and pupils and standards of medical fitness for teachers;

(g) the temporary exclusion from any school of any teacher or pupil, and any other measures necessary or desirable to preserve the health and well-being of teachers and pupils; (Amended L.N. 126 of 1995)

(h) the size of school classes and the number of pupils permitted in classrooms; (Amended 8 of 2001 s. 12)

(i) the control of instruction given by schools, including limitations on the subjects taught and the documents which may be upon school premises and which may be used by schools, and the preparation and contents of the syllabus to be used by any school or schools;

(j) the methods and hours of instruction provided by schools;

(k) the adequacy, suitability and use of school equipment, school laboratories and school workshops;

(l) the control of activities of managers, teachers, pupils and other persons in schools; (Amended 8 of 2001 s. 12)

(la) the establishment of parent-teacher associations; (Added 27 of 2004 s. 32)

(lb) the recognition of alumni associations for the purposes of section 40AP; (Added 27 of 2004 s. 32)

- (m) the control of the dissemination of information, or expression of opinion, of a clearly biased political nature in schools; (Replaced 47 of 1990 s. 10)
  - (n) the control of the use to which school premises may be put and of the persons who may enter school premises;
  - (o) school holidays;
  - (p) the constitution and duties of management committees and incorporated management committees; (Amended 27 of 2004 s. 32)
  - (pa) approval of constitutions of incorporated management committees; (Added 27 of 2004 s. 32)
  - (q) the keeping of school registers, time-tables and books of account;
  - (r) the amount and methods of payment of fees and other charges made by schools and the prohibition of any further fees and charges and of any specified fees or charges;
  - (s) the amounts of inclusive fees which may be charged by schools and the notification of such fees and the prohibition or restriction of variations from such fees; (Amended 8 of 2001 s. 12)
  - (sa) the approval by the Permanent Secretary of any scheme of fee remission, the remission of the whole or any part of inclusive fees and the persons who may grant such remission; (Added 47 of 1980 s. 3.)
  - (t) general matters of school management;
  - (u) the duties of management authorities and principals; (Amended 27 of 2004 s. 32)
  - (v) the giving by management authorities to the Permanent Secretary of such information concerning schools and pupils therein as may be required by the Permanent Secretary; (Amended 27 of 2004 s. 32)
  - (w) the qualifications and any continuing education and training of registered teachers and permitted teachers (whether they are principals or not), and the qualifications to be held by teachers of various classes and subjects; (Amended 1 of 2004 s. 12)
  - (x) the control of salaries paid to teachers;
  - (y) discipline in schools and methods of enforcement of discipline, and the conduct and dress of teachers and pupils;
  - (z) anything which is to be prescribed under this Ordinance;
  - (za) the application of Part V of the Ordinance, subject to such modifications as may be specified in the regulations, to and in relation to any decision made by the Permanent Secretary in exercising any power conferred on him under any regulation, and for matters incidental thereto or consequential thereon; (Added 47 of 1990 s. 10)
  - (aa) the better carrying into effect of the provisions of this Ordinance in relation to any matter as to which it may be convenient to make regulations.
- (2) Any regulation made under this section may-
- (aa) make different provisions for different types of schools or teachers; (Added 1 of 2004 s. 12)
  - (a) prohibit the performance of specified acts without the consent of the Permanent Secretary;
  - (b) authorize the Permanent Secretary to require or prohibit the performance of specified acts; and
  - (c) require specified acts to be performed to the satisfaction of the Permanent Secretary.
- (3) Regulations made under this section may provide that a contravention thereof shall be an offence punishable on conviction by a fine not exceeding \$250000 and a term of imprisonment not exceeding 2 years. (Amended L.N. 205 of 2000)
- (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. (Replaced 27 of 2004 s. 32)

(Amended 3 of 2003 s. 11)

Section:	85	Rules for provident funds	55 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 55 of 2000 s. 3

(1) For the purpose of maintaining any provident fund (whether established before or after the commencement of this Ordinance) for the benefit of teachers employed by schools to which grants in aid or subsidies are made by the Government, the Chief Executive in Council may make rules providing for- (Amended 55 of 2000 s. 3)

- (a) the objects and method of control and management and investment of such fund;
- (b) the persons or classes of persons who shall be eligible for membership of such fund, and the persons or classes of persons who shall be compulsory contributors to such fund;
- (c) contributions to such fund, and the method of payment;
- (d) the method of dealing with any contribution which may be made by the Government to such fund;
- (e) the constitution of a reserve fund to meet fluctuations in the value of investments, and for the allocation to a reserve fund of any investment income of the provident fund;
- (f) the method of, conditions precedent for, and authority for withdrawals and benefits, and the permissible amount of withdrawals and benefits;
- (g) the appointment of any trustees who may be considered necessary, and the powers and duties of the trustees; and
- (h) generally for the purpose of the maintenance of such fund.

(2) Such sums as may be necessary to meet the contributions payable by the Government to any provident fund in accordance with rules made under subsection (1) shall be met from moneys provided by the Legislative Council.

(3) Subject to any rules made under subsection (1), no contribution or donation to or dividend or interest on a dividend from a provident fund shall be assignable or transferable or liable to be attached, sequestered or levied upon, for or in respect of any debt or claim whatsoever.

(Amended 72 of 1971 s. 3)

Section:	85A	Conducting courses on general holidays	L.N. 18 of 2004	01/04/2004
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Notwithstanding anything in the General Holidays Ordinance (Cap 149), a registered school or provisionally registered school may conduct educational courses or give instructions on a general holiday.

(Added 1 of 2004 s. 13)

Section:	86	Prohibition of issue of degrees or documents resembling degrees		30/06/1997
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No person or school shall-

- (a) award a degree to a person; or
- (b) issue any document which could reasonably be taken as signifying the award of a degree to a person.

Section:	86A	Control of false advertising by unregistered schools	3 of 2003	28/02/2003
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(1) No person shall publish any advertisement that alleges that an institution, organization or establishment is registered or provisionally registered as a school under this Ordinance when it was not, at the time of publication, so registered or provisionally registered.

(2) No person shall publish any advertisement with respect to a school that is registered or provisionally registered unless that advertisement includes the registration number assigned by the Permanent Secretary to the school. (Amended 3 of 2003 s. 11)

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 6. (Amended L.N. 205 of 2000; 8 of 2001 s. 13)

(4) Where a person is charged with an offence under subsection (3) relating to an advertisement, it shall be a defence for such person to show that he carries on the business of publishing or arranging for the publication of advertisements, that he received the advertisement for publication in the ordinary course of business and that at the time he published the advertisement he believed upon reasonable grounds that the advertisement related to a school that was registered or provisionally registered.

(5) In this section "publish" (發布) includes issue, circulate, display, distribute or broadcast.

(Added 42 of 1993 s. 28)

Section:	86B	Control of false advertising by registered or provisionally registered schools	L.N. 90 of 2001	01/06/2001
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(1) No owner or manager of a school that is registered or provisionally registered shall publish or cause to be published any advertisement that-

- (a) alleges that the school is operating in, or authorized to operate in, premises other than the premises specified in the certificate of registration or provisional registration of the school; or
- (b) contains any other information otherwise concerning the school which to his knowledge is false or misleading in a material particular. (Amended 8 of 2001 s. 14)

(2) An owner or manager who contravenes subsection (1) commits an offence and is liable to a fine at level 6. (Amended L.N. 205 of 2000; 8 of 2001 s. 14)

(3) In this section "publish" (發布) includes issue, circulate, display, distribute or broadcast.

(Added 42 of 1993 s. 28)

Section:	87	Offences and penalties	27 of 2004	01/01/2005
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(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. (Added 27 of 2004 s. 33)

(1) Any person who-

- (a) is an owner or a teacher in a school which is not registered or provisionally registered; (Amended 47 of 1990 s. 11; 27 of 2004 s. 33)
- (aa) manages or takes any part in the management of a school which is not registered or provisionally registered; (Added 27 of 2004 s. 33)
- (b) is an owner or a manager of a school without IMC which is operated in contravention of section 19(1); (Amended 27 of 2004 s. 33)
- (c) contravenes section 27; (Amended 47 of 1990 s. 11)
- (d) obstructs-
  - (i) the Permanent Secretary or an inspector while the Permanent Secretary or inspector is carrying out, or attempting to carry out, an inspection of a school; (Amended 47 of 1990 s. 11; 3 of 2003 s. 11)
  - (ii) any manager appointed under section 41(1) in the performance of his functions as a manager;
- (e)-(g) (Repealed 8 of 2001 s. 15)
- (h) refuses to produce any book or document or other article or to furnish any information upon being so required under section 81 or 81A(1A), or furnishes information which is false in a material particular and which he knows or reasonably ought to know is false in such particular; (Amended 42 of 1993 s. 29)
- (ha) obstructs the Permanent Secretary or an inspector while the Permanent Secretary or inspector is carrying out, or attempting to carry out, an inspection of premises under section 81A(1) or in accordance with a warrant issued under section 81A(3); (Added 47 of 1990 s. 11. Amended 3 of 2003 s. 11)
- (i) being the supervisor or a manager of a school without IMC, fails to comply with any notice served on him under section 82; (Amended 27 of 2004 s. 33)
- (j) contravenes section 83(6); or
- (k) in or in connection with any application under this Ordinance makes any statement or furnishes any information, whether such statement or information be verbal or written, which is false in any material particular and which he knows or reasonably ought to know is false in such particular,

shall be guilty of an offence and shall be liable on conviction to a fine of \$250000 and to imprisonment for 2 years.

(2) Any person who-

- (a) is a member of any management committee which contravenes section 38(1) or section 40;
- (b) not being the supervisor of a school or a member of the management committee of a school acting under section 40, performs any function of the supervisor of the school;
- (c) not being the principal of a school or empowered under section 58AA(1) to perform the functions of the principal of the school, performs any function of the principal of the school; or (Amended 8 of

2001 s. 15)

(d) contravenes section 72(1) or (2),

shall be guilty of an offence and shall be liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(3) Any person who-

(a) is an owner or manager of a school without IMC which is operated in any name other than its registered name; (Amended 27 of 2004 s. 33)

(b) contravenes section 18(2) or (3);

(c) contravenes section 19(2);

(d) (Repealed 27 of 2004 s. 33)

(e) contravenes section 42(1) or (2);

(f) employs or permits any person to teach in a school in contravention of section 42(1) or (2);

(g) is a member of a management committee which contravenes section 53(1) or section 57(1);

(h)-(k) (Repealed 8 of 2001 s. 15)

(l) contravenes section 71;

(m) contravenes section 86; or

(n) is an owner or a manager of a school without IMC which contravenes section 86, (Amended 27 of 2004 s. 33)

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

(3A) Any person who-

(a) is a member of a management committee which contravenes section 74(2A); or

(b) contravenes section 74(2B),

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

(Added 47 of 1990 s. 11)

(3B) Any person who-

(a) refuses to furnish his proof of identity, residential address or contact telephone number upon being so required under section 81B; or

(b) furnishes a false residential address or contact telephone number upon being required under section 81B to furnish his residential address and contact telephone number,

shall be guilty of an offence and shall be liable on conviction to a fine at level 3. (Added 8 of 2001 s. 15)

(4) If a manager of a school is charged with an offence by reason of being a member of a management committee which has contravened a provision of this Ordinance specified in subsection (2)(a) or in subsection (3)(g), it shall be a defence to the charge if he proves that- (Amended 27 of 2004 s. 72)

(a) the other members of the management committee contravened such provision without his knowledge or consent; or

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

(5) For the purposes of subsection (3)(e) and (f), a person who, not being a registered teacher or permitted teacher, teaches in a school shall be deemed not to contravene section 42(1) if within the previous 6 months-

(a) he has made an application under section 44 and the application has not yet been determined by the Permanent Secretary; or

(b) an application has been made under section 48 to employ him as a permitted teacher in the school and the application has not yet been determined by the Permanent Secretary,

and the application does not form part of a succession of applications made under section 44 or 48 or both. (Added 53 of 1991 s. 2. Amended 3 of 2003 s. 11)

(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. (Added 27 of 2004 s. 33)

(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. (Added 27 of 2004 s. 33)

(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. (Added 27 of 2004 s. 33)

(Amended L.N. 205 of 2000)

Section:	88	Evidence		30/06/1997
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In any prosecution for an offence against this Ordinance-

- (a) if it is proved that any equipment, materials or documents of an educational nature or suitable for the purposes of a school were found at any place, it shall be presumed until the contrary is proved that a school was being operated at such place;
- (b) if it is proved that any person did any act in connection with the organization or operation of a school, it shall be presumed until the contrary is proved that such person took part in the management of such school; and
- (c) if it is proved that any person was in charge of or issued instructions to any person under 21 years of age in any school premises, it shall be presumed until the contrary is proved that the first-mentioned person was teaching in that school.

Section:	89	Liability of landlord and tenant of premises in which school is unlawfully operated	L.N. 205 of 2000	02/06/2000
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(1) A magistrate may, if satisfied that-

- (a) a school which is not registered or provisionally registered is being operated in any premises; or
- (b) a school is being operated in any premises which are not specified in the certificate of registration or provisional registration of the school,

order that a notice in writing of the fact shall be served on the landlord and the tenant of the premises or, if the landlord or tenant is absent or under disability, on his attorney or agent or the rent collector of the landlord or, if the landlord or tenant is a corporation, on the secretary or manager of the corporation.

(2) A magistrate may at the request of any person on whom a notice has been served in accordance with subsection (1), make an order terminating as from the date of the order the tenancy of the premises in which the school is being operated, and on the making of the order the tenancy shall cease and determine for all purposes and any tenant or occupier (other than the landlord) may be treated as a trespasser.

(3) An order under subsection (2) shall be recognized and given effect to in any proceeding in any court.

(4) An order under subsection (2) shall be sufficient authority to any police officer to enter at any time between the hours of 9 a.m. and 5 p.m., by force if necessary, the premises in respect of which the order is made and to give possession of such premises to the landlord or his agent.

(5) The powers conferred by subsection (4) shall be in addition to and not in derogation of any power conferred by any other enactment.

(6) If, after a notice has been served in accordance with subsection (1) on any person-

- (a) a school which is not registered or provisionally registered is operated in the premises in respect of which the notice was given; or
- (b) a school is operated in the premises in respect of which the notice was given and such premises are not specified in the certificate of registration or provisional registration of the school,

the person on whom the notice has been served (and the landlord or the tenant of the premises, if the person on whom such service is made is an attorney, agent, rent collector, secretary or manager for and on behalf of the landlord or tenant) shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 2

years, unless he proves to the satisfaction of the magistrate- (Amended L.N. 205 of 2000)

- (a) that a request has been made to a magistrate for an order under subsection (2); or
- (b) that he did not know and had no reasonable means of knowing that a school was being so operated on the premises.

(7) A person shall not be guilty of an offence under subsection (6) unless a reasonable time has elapsed, following the service of the notice in accordance with subsection (1) on him, during which a request could have been made to a magistrate for an order under subsection (2).

(8) In this section-

"landlord" (業主) includes the holder of any lease or tenancy who has sublet his holding or any part thereof;

"tenancy" (租賃) includes any sub-tenancy;

"tenant" (租客) includes any sub-tenant.

Section:	90	Powers of police officers to enter premises and remove suspected persons		30/06/1997
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(1) A magistrate may, if satisfied by information on oath that there is reasonable ground for suspecting that section 72 or section 83(6) has been or is being contravened in respect of any premises or place, issue a search warrant authorizing any police officer named therein to enter at any time such premises or place and to search the premises or place and every person found therein and to remove therefrom any person who is or is reasonably suspected to be contravening section 72 or section 83(6).

(2) A police officer may, if he reasonably suspects that section 72 or section 83(6) has been or is being contravened in respect of any premises or place other than a dwellinghouse-

- (a) enter such premises or place without a warrant, if necessary by force;
- (b) search such premises or place and every person found therein; and
- (c) remove from such premises or place any person found therein who is or is reasonably suspected to be contravening section 72 or section 83(6).

(3) Notwithstanding subsections (1) and (2), no person shall be searched under this section except by a person of the same sex.

Section:	91	Service of notices	27 of 2004	01/01/2005
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(1) Where provision is made in this Ordinance for the Chief Executive in Council or a public officer to serve a notice or to cause a notice to be served on a person, it shall be sufficient service if the notice is served- (Amended 55 of 2000 s. 3)

- (a) by causing it to be delivered personally to the person on whom it is to be served;
- (b) by causing it to be sent by registered post to the last known address of the person on whom it is to be served;
- (c) if the person on whom it is to be served is an owner, manager, management authority, principal, teacher or pupil of a school, by causing it to be sent by registered post to any premises specified in the certificate of registration or provisional registration of the school, or any premises in which the school is operated; or (Amended 27 of 2004 s. 70)
- (d) if the person on whom the notice is to be served is an owner, manager, management authority, principal or teacher of a school, by causing the notice to be posted in a conspicuous place upon or in any premises specified in the certificate of registration or provisional registration of the school, or any premises in which the school is operated. (Amended 27 of 2004 s. 70)

(2) Without prejudice to the provisions of subsection (1), where a notice is to be served on a person under section 89, it shall be sufficient service if it is served by causing the notice to be posted in a conspicuous place upon the premises to which it relates.

Part:	X	(Repealed 47 of 1980 s.4)		30/06/1997
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Part:	XI	SAVING AND TRANSITIONAL PROVISIONS		30/06/1997
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Section:	99	Saving		30/06/1997
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Notwithstanding the repeal of the Education Ordinance 1952 (Cap 279 1964 Ed), any appointment which has been made under either of the repealed Ordinances and which was in effect immediately prior to the commencement of this Part, shall continue to have effect as if, at the date when it was made, such appointment had been made under this Ordinance.

Section:	100	Transitional provisions regarding approved managers	3 of 2003	28/02/2003
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(1) On the coming into operation of section 12 of the Education (Amendment) Ordinance 1993 (42 of 1993), all certificates of approval issued to approved managers are null and void.

(2) Notwithstanding the repeal of sections 23 to 26 of this Ordinance by the Education (Amendment) Ordinance 1993 (42 of 1993), where a person's-

- (a) application was refused; or
- (b) approval was withdrawn,

by the Director of Education under those sections before their repeal, that person shall not, without the permission in writing of the Permanent Secretary, enter or remain in a school, and a person who contravenes this subsection commits an offence and is liable to the penalties provided under section 87(2). (Amended 3 of 2003 s. 10)

(Replaced 42 of 1993 s. 30)

Schedule:	1		27 of 2004	01/01/2005
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[section 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
- (d) the contract is subsisting immediately before the transition date,

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

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

## 3. Continuance of 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 1 added 27 of 2004 s. 34)

Schedule:	2		27 of 2004	01/01/2005
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[sections 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 2 added 27 of 2004 s. 34)

Schedule:	3	SPECIFIED SCHOOLS	L.N. 36 of 2010	04/06/2010
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[sections 40AB & 40AC]

School Name

School Address

Confucius Hall Middle School

77 Caroline Hill Road, Hong Kong

Discovery College

38 Siena Avenue, Discovery Bay, Lantau Island, New Territories (Added L.N. 57 of 2009)

The Independent Schools Foundation Academy	1 Kong Sin Wan Road, Pokfulam, Hong Kong (Replaced L.N. 146 of 2008)
International Christian Quality Music Secondary and Primary School	182 Po Kong Village Road, Diamond Hill, Kowloon (Amended L.N. 272 of 2006)
International Christian School	1 On Muk Lane, Shatin, New Territories (Added L.N. 146 of 2008)
Mu Kuang English School	55 Kung Lok Road, Kwun Tong, Kowloon
Po Leung Kuk Choi Kai Yau School	6 Caldecott Road, Shamshuipo, Kowloon (Amended L.N. 146 of 2008; L.N. 36 of 2010)
Renaissance College	No. 5 Hang Ming Street, Ma On Shan, Shatin, New Territories (Added L.N. 272 of 2006)
S.K.H. All Saints' Middle School	11 Pak Po Street, Kowloon
United Christian College	9 & 11 Tong Yam Street, Tai Hang Tung, Shamshuipo, Kowloon
Victoria Shanghai Academy	19 Shum Wan Road, Aberdeen, Hong Kong (Added L.N. 272 of 2006. Amended L.N. 146 of 2008)
Yew Chung International School—Secondary	3 To Fuk Road, Kowloon Tong, Kowloon (Added L.N. 146 of 2008)
	(Schedule 3 added 27 of 2004 s. 34. Amended L.N. 272 of 2006; L.N. 146 of 2008; L.N. 57 of 2009)