

Section 5

Operation of IMC

5.1 Protection and Flexibility

With effect from the date of incorporation specified in the certificate of incorporation, the IMC shall become a body corporate with perpetual succession. The IMC, the supervisor and individual school managers are separate legal entities.

The operation of an IMC shall be governed by its constitution. If necessary, an IMC may by resolution amend its constitution in the manner provided for in the constitution. For details of the protection and flexibility enjoyed by an IMC, please refer to **Appendix 8**.

5.2 Asset Management

After its establishment, the IMC may use and dispose of the funds and assets owned by it, and handle funds and assets received from the Government in the capacity of a trustee. Besides, the Ordinance provides that in the execution of a judgment by writ of fieri facias, the property that is located in the school premises and used in connection with giving instructions to the pupils of the school shall not be seized.

5.3 Guidelines issued by Sponsoring Body

Section 40AF(3)(b) of the Ordinance provides that a sponsoring body may issue guidelines to its IMC for raising funds (including borrowing money) or entering into any contract, agreement or arrangement involving funds other than funds received from the Government.

The sponsoring body may, with reference to the core principles stated in **Appendix 9**, issue to the IMC appropriate guidelines as to how to handle the relevant financial arrangement.

5.4 Functions of Supervisor

According to the Ordinance, a supervisor must be a manager of the school but must not be the principal or a teacher of the school. The supervisor shall be appointed by the sponsoring body or elected by the managers of the school in accordance with the constitution of the IMC. The supervisor shall preside over the meetings of the IMC; give notice in writing to the Permanent Secretary regarding termination of office of any manager, principal or teacher or appointment of any teacher, any change in respect of the tenancy of the school premises and receipt or issue of a writ or other originating process by the IMC or the judgment in the proceedings; sign the statement of accounts; and perform such functions as may be provided for in the constitution of the IMC. The Ordinance also reduces the role of the supervisor of an IMC school on day-to-day school operation and management. For details, please refer to [Appendix 10](#) and [Appendix 11](#).

5.5 Liability of Manager and Protection

5.5.1 *Civil Liability*

Under section 40BI of the Ordinance, 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. A manager shall not be made a defendant for any act or omission if he acts in good faith and without malice or fraudulent intention or bad motive. No proceedings shall be brought against a manager of a school for anything done or omitted to be done by the IMC unless he has not acted in good faith in relation to the thing and omission. General proceedings towards a school will be brought against the IMC instead of an individual manager.

5.5.2 Criminal Liability

As to criminal liability, an individual manager shall not be held liable unless he consents to or connives at any unlawful behaviour of the IMC. If a manager of an IMC specifically consents to or connives at any irregularity in school operation in contravention of the Ordinance, he may be made liable personally. Moreover, according to the existing legislation, the burden of proof is on the prosecution instead of the manager in such proceedings. In criminal proceedings, the standard of proof is very stringent. Hence, the risk of a school manager incurring liability is very slim if he acts in good faith.

5.6 Declaration and Disclosure of Interests by Manager

The procedures for declaration and disclosure of interests are laid down clearly in sections 40BF and 40BG of the Ordinance. A school manager should, at least once in every 12 months, make a written declaration to the IMC. The declaration, kept in a register, may state that the manager does not have any interest to declare or may give in detail any personal interest that the manager has in any matter that raises or may raise a conflict with his duties as a manager of the school. Any change in relation to the declaration should be made known to the IMC in writing within one month of the change. It is against the law for a manager to make a declaration which he knows to be materially false or misleading.

Without limiting section 40BG of the Ordinance, a manager shall make disclosure in accordance with that section in respect of a matter that is considered or is to be considered at a meeting of the IMC if —

- the manager is the principal or a teacher of the school and the matter involves the appraisal of the manager's performance as a staff member; or

- the manager is the parent of a pupil of the school and the matter involves the taking of disciplinary actions against the pupil; or
- the manager is directly related to a complaint against a pupil or teacher of the school or another manager, and the matter involves the taking of disciplinary actions against the pupil, teacher or that other manager respectively; or
- the matter relates to a complaint against the manager; or
- the manager is directly related to the trading operations/business contracts to be discussed or tenders to be awarded.

5.7 Selection of Principal

The principal of a school should be selected in a fair, impartial and open manner. Under the Ordinance, an IMC shall appoint a selection committee to select its school principal. However, the sponsoring body has the power to re-deploy the principals of its schools under certain circumstances, for example, to alleviate redundancy of teachers arising from a reduction of classes or for the professional development of a particular person. Under such circumstances, the sponsoring body can request the IMC of its school to terminate the appointment of a person as the principal of the school and recommend the person to be registered as the principal of another school. According to the Ordinance, if the sponsoring body chooses not to exercise its power of re-deployment of principal, the IMC must appoint a selection committee to select its principal in compliance with the constitution of the IMC.

Appendix 8

Protection and Flexibilities Enjoyed by IMC Schools

Section/Regulation	IMC schools	Schools without IMC
Section 40BI <i>Rights and liability of manager and protection</i>	(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.	Managers are not protected against civil liability claims.
	(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.	
Regulation 63 <i>Formal receipts</i>	The payment of every sum of money by or on behalf of a pupil to a supervisor, manager or teacher of a school without IMC shall be forthwith acknowledged in writing by such supervisor, manager or teacher on a proper form of receipt.	Must acknowledge the payment in writing on a proper form of receipt.
	This provision is not applicable to the IMC schools, i.e. an IMC school is not required to acknowledge the payment of every sum of money by a pupil in writing on a proper form of receipt.	Supervisors or managers who contravene the regulation commit an offence.
Regulation 66 <i>Prohibition of collections without permission of Permanent Secretary</i>	(1A) This regulation does not apply to an IMC school.	Must obtain the prior permission of the Permanent Secretary before appealing for subscriptions and collection. Any person who contravenes regulation 66(1) commits an offence. Any manager who contravenes regulation 66(2) commits an offence.
	(1) No person shall in any school premises — (a) appeal to any pupils of a school for subscriptions; or (b) make any collection among any pupils of a school, without the permission in writing of the Permanent Secretary.	
	(2) No manager or teacher of a school shall in any way whatsoever — (a) appeal to any pupils of a school for subscriptions or permit any appeal to be made to or among any pupils of a school for subscriptions; or (b) make any collection among any pupils of a school or permit any collection to be made by or among any pupils of a school, without the permission in writing of the Permanent Secretary.	

Protection and Flexibilities Enjoyed by IMC Schools

Section/Regulation	IMC schools	Schools without IMC
	<p>The provision is not applicable to IMC schools, i.e. there is no need to seek the prior permission of the Permanent Secretary for a manager or teacher of an IMC school to appeal to any pupils of the school for subscriptions or permit any appeal to be made to or among any pupils of the school for subscriptions; or make any collection among any pupils of the school or permit any collection to be made by or among any pupils of the school.</p>	
<p>Regulation 83 <i>List of holidays to be posted</i></p>	<p>(1) The supervisor of a school without IMC shall inform the principal of —</p> <ul style="list-style-type: none"> (a) all holidays of which the supervisor has given the Permanent Secretary notice as required under regulation 79; (b) any notice received from the Permanent Secretary under regulation 81 forbidding the granting of a holiday on any specified day; and (c) any notice received from the Permanent Secretary requiring that a holiday shall be given on any specified day. <p>(2) The principal of a school shall cause to be posted at all times in a conspicuous place in the school premises a list specifying every holiday which is to be given in the current school year in accordance with this Part.</p> <p>(3) Every list required to be posted under paragraph (2) shall be signed by the principal and, where the school is a school without IMC, countersigned by the supervisor.</p>	<p>The supervisor must inform the principal of the holidays of which the supervisor has given the Permanent Secretary notice and the notice received from the Permanent Secretary relating to holidays. Also, the list of holidays to be posted must be countersigned by the supervisor.</p> <p>Supervisors who contravene regulation 83(1) or (3) commit an offence; principals who contravene regulation 83(3) commit an offence.</p>
	<p>Regulations 83(1) and (3) are not applicable to IMC schools, i.e., the supervisor of an IMC school does not need to inform the principal of the holidays of which the supervisor has given the Permanent Secretary notice and the notice received from the Permanent Secretary relating to holidays. The list of holidays to be posted does not need to be countersigned by the supervisor.</p>	

Section/Regulation	IMC schools	Schools without IMC
Regulation 88 <i>Size of classes</i>	<p>In any school providing —</p> <p>(c) primary, secondary or post-secondary education or any other educational course (other than an IMC school), not more than 45 pupils, shall be taught at one time by one teacher, except in special cases with the permission of the Permanent Secretary.</p> <p>The provision is not applicable to IMC schools, i.e., there is no need to seek the permission of the Permanent Secretary for a teacher to teach more than 45 pupils at one time in an IMC school.</p>	<p>Must obtain the permission of the Permanent Secretary before a teacher teaches more than 45 pupils at one time.</p> <p>Any person who contravenes the regulation commits an offence; supervisors and principals shall incur criminal liability.</p>
Regulation 99A <i>Business or trading operation</i>	<p>(1) No supervisor, manager or management committee of a school in receipt of public funds shall, without the prior permission in writing of the Permanent Secretary —</p> <p>(a) operate or permit to operate on school premises any business or trading undertaking; or</p> <p>(b) enter into any business or trading arrangement, directly or indirectly, with any person for the supply of food, drinks, books, stationery, uniforms or any other thing that is required by such school to be possessed or used by pupils of the school.</p> <p>(2) Where permission has been granted for the purposes of paragraph (1), the supervisor of the school shall —</p> <p>(a) within 4 months after the end of the financial year of the school, or such extended period as may be permitted by the Permanent Secretary, furnish to the Permanent Secretary an annual audited statement of accounts of every such business or trading undertaking, or business or trading arrangement; and</p> <p>(b) furnish together with such statement of accounts a statement indicating how the profits have been applied or are intended to be applied.</p>	<p>Must obtain the prior permission in writing of the Permanent Secretary before a school operates or permits to operate on school premises any business or trading undertaking. Also, the school must furnish to the Permanent Secretary a statement of accounts of the business and indicate how the profits are intended to be applied.</p> <p>Any supervisors or managers who contravene regulation 99A(1) or (3) commit an offence.</p>

Protection and Flexibilities Enjoyed by IMC Schools

Section/Regulation	IMC schools	Schools without IMC
	<p>(3) No supervisor, manager or management committee of a school in receipt of public funds shall apply the profits for any purpose not directly benefiting the pupils of the school without the prior permission in writing of the Permanent Secretary.</p> <p>(4) For the purposes of this regulation — "profits" (利潤) means any profits or net income arising from a business or trading undertaking, or a business or trading arrangement, referred to in paragraph (1); "school in receipt of public funds" (接受政府撥款學校) means — (a) any aided school which is a school without IMC; or (b) any school that is operated by the English Schools Foundation.</p> <p>This provision is not applicable to IMC schools, i.e. an IMC school does not need to seek the prior permission in writing of the Permanent Secretary in operating or permitting to operate on school premises any business or trading undertaking. The school does not need to furnish to the Permanent Secretary a statement of accounts of the business and indicate how the profits are intended to be applied. (Note: IMC schools shall comply with regulation 99B which restricts that any profits or net income arising from the business or trading undertaking shall be applied for the purpose directly benefiting the pupils of the school.)</p>	
Regulation 101 Offences	<p><i>If the following regulations are contravened, the managers of IMC schools shall not incur any criminal liability:</i></p> <p>[Regulation 62] Method of payment</p> <p>(1) Unless otherwise permitted in writing by the Permanent Secretary, the inclusive fees for an educational course shall be calculated on an equal monthly basis and collected on or after the first school day of each month of the period during which the educational course is conducted.</p>	<p>If the following regulations are contravened, the following person(s) may incur criminal liability:</p> <p>Managers</p>

Section/Regulation	IMC schools	Schools without IMC
	(2) Notwithstanding paragraph (1), a management authority may require a pupil to register for an educational course by paying the first monthly instalment not earlier than one month before the commencement of the educational course.	
	[Regulation 65] Approval for change in fee No change in the inclusive fee shall be made without the written approval of the Permanent Secretary.	Managers
	[Regulation 67] Duty to exhibit certificate The certificate issued in respect of a school under regulation 60A(1)(ii) shall be kept conspicuously exhibited at a prominent position in the school.	Supervisors and principals
	[Regulation 79] Notice of school holidays The responsible person shall send to the Permanent Secretary before 15 August in each year notice of all holidays it is intended to give in the coming school year, including any special holidays given in honour of any particular event, and of all dates on which the usual work of the school will be suspended.	Supervisors
	[Regulation 80] Restriction on holidays No holidays shall be given and the usual work of a school shall not be suspended except on a date mentioned in the notice given under regulation 79 or with the permission of the Permanent Secretary.	Supervisors and principals
	[Regulation 81] Permanent Secretary may disapprove The Permanent Secretary may by notice in writing to the management authority forbid the granting of a holiday on any specified day. The management authority and the principal shall upon such notice ensure that the usual work of the school is continued on that day.	Supervisors
	[Regulation 82] Permanent Secretary may require grant of holiday The Permanent Secretary may by notice in writing to the responsible person of any school require that a holiday shall be given on any day specified in such notice and the responsible person shall ensure that such holiday is given accordingly.	Supervisors

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	<p>[Regulation 83(2)] List of holidays to be posted The principal of a school shall cause to be posted at all times in a conspicuous place in the school premises a list specifying every holiday which is to be given in the current school year in accordance with this Part.</p>	Principals
	<p>[Regulation 90] Attendance registers A separate attendance register in a form approved by the Permanent Secretary shall be kept for each class.</p>	Supervisors and principals
	<p>[Regulation 92(2)&(12)] Syllabus and time-table subject to approval of Permanent Secretary (2) The responsible person of every school shall submit to the Permanent Secretary whenever so required by the Permanent Secretary the syllabus of instruction of each class or any other document he may specify for his approval. (12) The responsible person shall inform the Permanent Secretary of any change in the hours of school work.</p>	Supervisors
Regulation 101 Offences	<i>The following regulations have been decriminalised and criminal liability shall not be incurred if they are contravened.</i>	
	<p>[Regulation 19(1)&(3)] Numbers of pupils allowed on a roof playground or balcony (1) There shall not be more than 60 pupils upon any roof playground under the charge of one teacher at any one time. (3) A certificate by an inspector of schools that he has examined the authorized person's certificate stating the maximum number of pupils allowed upon any approved roof playground or balcony shall be exhibited in a conspicuous place on the school premises.</p>	
	<p>[Regulation 47] Refreshment places Every tuckshop, canteen, dining-room, kitchen or other place on the school premises where food or drink is prepared, provided or consumed shall be maintained in a clean and hygienic condition.</p>	
	<p>[Regulation 48(1)] Sanitary condition (1) All school premises shall be maintained in a clean and sanitary condition.</p>	

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Regulations repealed	<p><i>The following provisions have been repealed:</i></p> <p>[Regulation 19(2)] Numbers of pupils allowed on a roof playground The total number of pupils allowed on any roof playground, verandah or balcony at any one time shall not be greater than one for every 2 m² of superficial area.</p> <p>[Regulation 48(2)] Cleaning and colour washing The supervisor shall, if so required in writing by the Permanent Secretary, cause the whole or any part of the school premises to be suitably colour-washed or repainted.</p> <p>[Regulation 89] Hours of instruction</p> <ol style="list-style-type: none"> (1) No instruction shall be given by any school after 9.30 p.m. except with the permission of the Permanent Secretary. (2) No instruction shall be given by any school during such hours as may be specified by the Permanent Secretary in respect of that school by notice in writing to the supervisor. <p>[Regulation 95] Non-resident pupils</p> <ol style="list-style-type: none"> (1) The Permanent Secretary may direct that no pupil or pupils other than a pupil or pupils residing on the school premises shall be on the school premises during such periods of time as the Permanent Secretary may specify. (2) No pupil to whom a direction under paragraph (1) applies shall be on the school premises at any time during any period specified by the Permanent Secretary in such direction. <p>[Regulation 97(2)] Expelled or suspended pupil not to enter school premises without permission No pupil who has been suspended from a school under regulation 96(1) shall enter or remain in the school premises —</p> <ol style="list-style-type: none"> (a) during the period of his suspension; or (b) in contravention of the conditions of his suspension, without the permission of the Permanent Secretary. <p>[Regulation 101(8)] Offences Any pupil of a school who contravenes regulation 95(2) or 97 shall be guilty of an offence.</p>	