## 胡昪李羅律師行 Woo Kwan Lee & Lo

PLEASE REPLY TO: Sun Hung Kai Centre Branch Office

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Your Ref.

DX:009082-Central 1

Direct Line: Direct Fax:

Date:

5<sup>th</sup> October 2015

BY EMAIL & BY POST

Our Ref.

Mr. Koo Ming Kown

Unit 1201, 12/F, Tower 1, Lippo Centre, No. 89 Queensway, Admiralty, Hong Kong.

Dear Mr. Koo,

Re: Legal opinion on establishment of an incorporated school management committee of Pui Ching Primary School ("PCPS")

- You ask us to render an opinion on the legal feasibility of establishing an incorporated school management committee (法團校董會) of PCPS.
- In summary, it is in our opinion that the school management committee of PCPS can be incorporated under the Companies Ordinance (Cap. 622). notwithstanding that the provisions for establishment of an incorporated management committee ("IMC") under the Education Ordinance (Cap. 279) are not applicable to PCPS, being a private school.

#### I **Background**

- We have been provided by you with copies of the following documents: -3
  - a letter dated 13 August 2015 jointly issued by 61 alumni of the Pui Ching Schools 3.1 (comprising scholars and experts in different fields around the world) to the Baptist Convention of Hong Kong ("BCHK") and copied to the Hong Kong Pui Ching alumni, alumni of Pui Ching all over the world and the Education Bureau of the Hong Kong Special Administrative Region ("Joint Letter")(copy attached as Annex 1);

Partners William C.Y. Kwan \* ,FKC Angelina P.L. Lee SBS, JP Peter C.L. Lo 關卓然李王佩玲 学羅張鄭馬李阮叢土心恵養豪嘉家が中の慶清輝士輝男 Peter C.L. Lo Cheung Wai Hing # Ivy S.C. Chan Ma Ho Fai #, SBS, JP Carmelo K.S. Lee, JP Yuen Ka Fai Yuen Ka Fai Wong Wing Yan, Kenneth ^ Leung Chong Shun Lau Shui Yiu Dora W.Y. Chan Albert Bux Lee Sau Tuen, Sandy Keung Yu Tsui Tsang May Ping Kem Hueg Ming 梁劉陳石李姜曾甘何創瑞慧偉秀儒美鴻蕙順瑤兒明端翠萍明雲

陳葉雷沈葉姚張陸劉區孔楊胡黃施黃吳桂寶耀卓偉鈺麗麗麗熙雲素達小慧國瑞漢儀輝斌彥華桂珠詩宜驲芳文燕芬垣帆 Bucky K.H. Chan Poreý Ip Lui Yiu Fai Shum Cheuk Pan Yip Wai Yin Yiu Yuk Wah, Annie Cheung Lai Kai, Edwina Lok Lai Chu, Anita Lau Lai Sze Au Hei Yee Au Hei Yee Hung Suet Shan, Catherine Yeung So Fong Wu Tat Man, Damon Albert Wong Siu Yin, Rosella Sze Wai Fun

陳志冲

Wong Kwok Wun Ng Sui Fan Chan Chi Chung, Simon

Consultants Sir Po Shing Woo \* Charles Y.K. Lee #, GBM, JP Stephen C.N. Lo \* Stephen C.N. Lo '
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Gleeson, Noel M. O.B.E.
Tai Chun To, Terence '
Lee Sin Kan, Virginia
Chan Adeline
Cheung Ho Fai, Derek '
Cheng Rai Chun, Jonathan
Kwan Boon On, Adah
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Poon Sze Chun Seto Chi Man, Jacqueline Tse Ka Yee Wan Chung Man Wong Hoi Yin Wong Rennie Teen Yan Wong Siu Chung Wu Angela Yeung Pui Yu, Bonnie

· 詩志嘉鎮愷天兆珮佩 · 詩志嘉鎮愷天兆珮佩



- 3.2 a reply letter dated 24 August 2015 issued by the BCHK ("**BCHK's Letter**") (copy attached as Annex 2); and
- 3.3 a letter dated 4 September 2015 issued by the Secretary for Education to your assistant Ms. Wong Ka Yee ("Secretary's Letter") (copy attached as Annex 3).
- 4 By the Joint Letter, the said 61 alumni of the Pui Ching Schools jointly suggested to the BCHK that to protect the sustainable development of the Pui Ching Schools, an incorporated school management committee should be established for the management of the PCPS with reference to the provisions under the Education Ordinance.
- 5 In the BCHK's Letter, BCHK replied, inter alia, that: -
  - 5.1 "《教育條例》中並沒有規定私立學校 (如香港培正小學) 成立法團校董會,而本港並沒有私立學校成立法團校董會的舉措。" (The Education Ordinance does not require a private school (such as PCPS) to establish an IMC and there is no measure for private school to establish an IMC in Hong Kong); and
  - 5.2 "本聯會已就這方面向教育局查詢,並獲得以下回覆:-
    - 1) 確定所有私立學校不需要成立法團校董會;
    - 2) 只有直資學校才可申請成立法團校董會。"

(BCHK has inquired with the Education Bureau in this regard and received the following replies: (1) confirm that all private schools are not required to establish an IMC; and (2) only direct subsidy school can apply to establish an IMC.)

In the circumstances, we are instructed to advise whether BCHK's suggestion as quoted above is correct in law.

#### II Incorporation of school management committee

There are two ways in which the management committee of a school may become an incorporated body. It can be incorporated under the Education Ordinance as an IMC or under the Companies Ordinance as a school management company.

#### Incorporation under the Education Ordinance

- 8 Part IIIB of the Education Ordinance governs management of schools with IMC. All aided schools are required to establish an IMC.
- The sponsoring body of an aided school shall submit to the Permanent Secretary for Education (the "Permanent Secretary") a draft of the constitution of the proposed IMC and a list of the proposed managers of the school for approval (see sections 40BK and 40BM¹ and also sections 40BU and 40BW² of the Education Ordinance). According to sections 40BN³ and 40BX⁴ of the Education Ordinance, if the Permanent Secretary approves the draft constitution and list of proposed managers, he shall register the proposed managers as managers of the school and issue a certificate of incorporation. With effect from the date of incorporation, the IMC shall be established as a body corporate with perpetual succession.
- 10 It is noted that under section 40BQ of the Education Ordinance, on the date of establishment of the IMC, if the school previously has its management committee registered as a school management company under the Companies Ordinance, such school management company is deemed to be dissolved under section 748 of the Companies Ordinance.
- 11 Part IIIB of the Education Ordinance also provides that direct subsidy schools and specified schools (i.e. schools listed in Schedule 3 to the Education Ordinance) may opt to establish an IMC by giving written notice of such intention to the Permanent Secretary (see sections 40BJ and 40BT).
- We are instructed that PCPS is a private independent school. Therefore, it is correct that PCPS is not required to establish an IMC under the Education Ordinance. Moreover, as it is neither a direct subsidy school nor one of the specified schools set out in Schedule 3 to the Education Ordinance, the option to establish an IMC under the Education Ordinance also does not apply to the case of PCPS.

<sup>&</sup>lt;sup>1</sup> For aided schools commenced operation before 1 January 2005

<sup>&</sup>lt;sup>2</sup> For aided schools commenced or will commence operation after 1 January 2005

<sup>&</sup>lt;sup>3</sup> For aided schools commenced operation before 1 January 2005

<sup>&</sup>lt;sup>4</sup> For aided schools commenced or will commence operation after 1 January 2005

13 However, the suggestion in the BCHK's Letter that there is no measure in Hong Kong for a private school to set up an incorporated school management committee ("而本港並沒有私立學校成立法團校董會的舉措") is misleading and wrong in law.

Incorporation under the Companies Ordinance

- 14 The Education Ordinance does not prohibit the management committee of a school to become a body corporate.
- 15 Section 40BQ of the Education Ordinance referred to above recognizes that a school may have its management committee registered as a school management company under the Companies Ordinance.
- 16 The Secretary for Education confirms this approach in the Secretary's Letter:-

"有關成立法團校董會的[《教育條例》],僅適用於上述三種類別的學校(即資助學校、直資學校及指明學校;私立學校並不屬於上述任何一種類別的學校。如私立學校有意成立由不同持分者參與的校董會,其現有的校董會可以根據《公司條例》及其附屬法例申請成立具法團地位的公司,並訂定該等章程大網及章程細則。" (our emphasis underlined)

17 The composition and mode of operation of a school management company are governed by its memorandum and articles of association and the provisions of the Companies Ordinance. When drafting the memorandum and articles of association of a school management company, references can be made to the mechanism of an IMC under the Education Ordinance.

#### III. Conclusion

- 18 It is misleading and wrong in law for the BCHK to say that "本港並沒有私立學校成立法 團校董會的舉措".
- 19 PCPS as a private school may have its management committee incorporated under the Companies Ordinance for school management. The management committee so

- incorporated has the liberty to adopt the same or similar structure and mode of operation of an IMC under the Education Ordinance.
- 20 Therefore, the suggestion raised by the said 61 alumni of the Pui Ching Schools jointly to the BCHK in the Joint Letter (that an incorporated school management committee should be established for the management of the PCPS with reference to the provisions under the Education Ordinance) is legally feasible.
- 21 Should you have any queries, please feel free to let us know.

Yours sincerely,

WOO KWAN LEE & LO

Encl.

致:香港培正同學會

黎藉冠會長大鑒:

茲附上六十一位培正校友學者專家聯署致培正小學辦學團體「香港浸信會聯會」公開函,倡議成立「香港培正小學法團校董會」,使培小管治得以納入現代常軌。望貴會能協助將此函轉發有關機構、主事人、各地培正同學會和校友。

謹此致謝 並祝鈞安

聯署代表 陳炯林 2015 年 8 月 13 日 致: 香港浸信會聯會會長 莫江庭牧師

香港浸信會聯會第一副會長 劉文軒執事 香港浸信會聯會第二副會長 徐秀蘭牧師 香港浸信會聯會第三副會長 林海盛牧師

香港浸信會聯會總幹事 林守光牧師

香港浸信會聯會中、小學持續教育部部長何鏡煒博士

副本抄送: 香港培正同學會

全球培正校友

香港特別行政區政府教育局

#### 敬啟者:

自去年 (2014) 「浸聯培專事件」曝光,一年以來,在全球廣大培正校友的關注查詢下,培 正中/小學的辦學團體香港浸信會聯會、及其轄下的香港培正小學管理委員會、培正小學陳之 望校監等應允了以下要求 :

- (一) 培正小學新建錢涵洲大樓和培正小學一切資源歸小學使用。
- (二)「培正專業書院」不遷進新大樓。

足見 貴會能從善如流,校友們亦感到欣慰。 然而,此乃事後修補,還有一些治本的要求,尚待討論與解決。 培正小學教育大樓的設計與建築跨越多年,但到大樓投用時才被發現高度遠超香港中小學二十四米的規格,所有超高樓層不能為中小學生所用。 大家自然會問:究竟發生了什麼事? 什麼是導致事件的前因? 此事件對香港培正小學、培正校譽、甚至浸聯會的名聲,已釀成了損害,怎樣能夠防止此類事件再次發生呢? 對培正的將來和校友來說,前因的詳情並不重要,無論是什麼理由,此「事件」證明了現有管理制度容許出漏的機會相當大。

事實上有不少校友和社會人士指出,問題根源在於香港培正小學管理委員會的組成結構。該會現時九名有投票權的委員中,八人是由香港浸信會聯會委任的,餘下一位是香港培正同學會的代表,這樣的組成是否有足夠廣泛的代表性呢? 眾持份者沒有參與權如何能顧及學校運作的多面性、或保障透明度呢? 委員們最終代表誰的利益? 在監督疏鬆了的情況下,會不會滋生個人或小圈子利益的傾斜呢? 委員會組成的缺陷,乃是出漏的溫床。

培正學者校友(十三位和十八位)曾數次致函和面見貴會領導層和培小校監,提出這些問題,並建議修改培小的管理制度。可惜至今未獲正面答覆。

眾所周知,辦教育等同營運大機構,管理制度非常重要,時代進步了,制度亦必需與時並進。 環顧全球全港的大、中、小學校在過去十年間都陸續組成或改組了學校的校董會,採用了適合 新時代的新結構。 因此我們希望香港浸信會聯會及其屬下的「中小學及持續教育部」亦能邁出 此重要一步,參照香港教育司署「法團校董會的組成」條款(詳情如附件),改組培小現有的管理架構,在維持浸聯會佔主導席位的前提下,收納各有關方面的精英代表,設立正式的<u>香港培</u>正小學法團校董會, 以保障培正母校的教育事業得以持久無憂地發展,更上層樓,為香港教育打造出一個突出的典範。

經詳細商討,全球培正學者專家均覺得推動此事義不容辭,所以再一次發起聯署,要求香港 浸信會聯會執事諸先生,從公利出發,認真考慮我們的至誠要求,及早作出推進教育、利人利 己的行動。

專此函達 順頌 台祺

文 正(1952 偉社)	卓以和(1955 忠社)	鍾景輝(1955 忠社)
沈呂九(1955 忠社)	魯志揚(1955 忠社)	姚若鵬(1955 忠社)
曾 梓(1956 瑩社)	何鍾泰(1958 銳社)	陳子樂(1958 銳社)
劉紹偉(1959 光社)	余 凡(1962 旭社)	陳子松(1962 旭社)
劉煥文(1962 旭社)	王世全(1962 旭社)	陶靖輝(1962 旭社)
周展懷(1962 旭社)	黄志宏(1962 旭社)	趙從偉(1962 旭社)
石耑生(1962 旭社)	唐瑪琍(1962 旭社)	廖約克(1963 真社)
胡斑比(1963 真社)	甄仕坤(1963 真社)	胡比樂(1964 協社)
周英強(1964 協社)	關仕清(1965 耀社)	管宏生(1965 耀社)
黃昭欽(1965 耀社)	陳振華(1965 耀社)	林耀煇(1965 耀社)
黃耀華(1965 耀社)	劉德光(1965 耀社)	朱明若(1965 耀社)
朱全美(1965 耀社)	丘成桐(1966 皓社)	鄭紹遠(1966 皓社)
徐少達(1966 皓社)	鄧文正(1966 皓社)	郭乾初(1966 皓社)
陳瑞玲(1966 皓社)	陳雁珍(1966 皓社)	顧海銘(1966 皓社)
陳炯林(1967 恆社)	郭 新(1967 恆社)	胡小樂(1967 恆社)
王 彬(1967 恆社)	岑俊江(1967 恆社)	楊思敏(1967 恆社)
孔志光(1967 恆社)	梁海明(1972 賢社)	劉紀美(1972 賢社)
黄兆永(1972 賢社)	李慧明(1972 賢社)	王永雄(1973 勤社)
曾憲國(1976 捷社)	吳積信(1976 敏社)	陳榮達(1976 敏社)
黃振國(1983 凱社)	林文量(1985 博社)	谷德權(1987 德社)
古緯詩(1988 曦社)		

全球培正學者專家 謹啟 2015 年 8 月 13 日



# 香港浸信會聯會

### The Baptist Convention of Hong Kong

香港九龍旺角山東街 47-51 號中僑商業大廈 8 樓

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總幹事:林守光牧師 General Secretary: Rev. Lam Sau Kwong

會長:莫江庭牧師 President: Rev. Mok Kong Ting

檔案編號:ED20150824/陳炯林-回應聯署公開函/001/6684/SKL/sw

敬啟者:

### 有關: 培正校友學者專家聯署的公開函

有關題述函件,業已收訖。

本會感謝諸位培正校友對母校的關心和支持,作為香港培正中學及香港培正小學 的辨學團體,本會向來以培正的利益為大前提,亦期望能與各紅藍兒女携手合作,以 維持良好的教學環境。

#### 新大樓(錢涵洲紀念樓)的使用

誠如來函所述,香港培正小學新建的錢涵洲紀念樓將全由香港培正小學所管理, 而本會去年亦已表明培正專業書院亦不會使用錢涵洲紀念樓的任何部份,本會更希望 藉此機會澄清錢涵洲紀念樓的使用。

據本會理解,錢涵洲紀念樓樓高 14 層,所有設施,包括禮室、運動場、多用途室 等均由香港培正小學全權使用,而香港培正小學亦正逐步遷入錢涵洲紀念樓 8 樓至 14 樓,其中位於[9樓]的教員休息室亦已開始運作。

本會再次強調,錢涵洲紀念樓的管理一直由香港培正小學負責,而所有收益亦撥 歸香港培正小學,本會絕不佔用。

#### 管理制度

本會轄下的所有學校,包括香港培道小學、香港培正小學等均由本會的中小學及 持續教育部負責監察,而該部亦不時會向各學校的管理委員會就學校的管理發出指 引,而各學校的管理委員會亦時常會向不同的人士,包括各學校的校友收集意見。 香 港培正同學會亦在香港培正小學管理委員會佔一席位。

請諸位校友理解 《教育條例》中並沒有規定私立學校(如香港培正小學)成立法 團校董會,而本港並沒有私立學校成立法團校董會的舉措。 本聯會已就這方面向教育 局查詢,並獲得教育局以下回覆:-



# 香港浸信會聯會

### The Baptist Convention of Hong Kong

香港九龍旺角山東街 47-51 號中僑商業大廈 8 樓 8/F, 47-51 Shan Tung Street, Mong Kok, Kowloon, Hong Kong 會長:莫江庭牧師 President: Rev. Mok Kong Ting

8/F, 47-51 Shan Tung Street, Mong Kok, Kowloon, Hong Kong 電子郵箱 Email: info@hkbaptist.org.hk 網址 Website: http://www.hkbaptist.org.hk

總幹事:林守光牧師 General Secretary: Rev. Lam Sau Kwong

第二頁

- 1) 確定所有私立學校不需要成立法團校董會;
- 2) 只有直資學校才可申請成立法團校董會。

然而,本會作為辦學團體,向來對教育事業不遺餘力。 為求精益求精,本會已在轄下的學校的管理中汲納校本管理的精粹,務求與時並進,確保教學的質素。

#### 結語

本會對諸位校友對培正的關愛表達謝意,期望在往後的日子能與各紅藍兒女共同 努力,以打造良好的教學環境。

煩請 閣下將本函轉交各聯署校友以供其頃閱。

此致 聯署代表陳炯林先生

香港浸信會聯會

會 長:莫 江 庭

書記:陳偉生

總幹事:

林守光

主曆二零一五年八月二十四日



#### 中華人民共和國香港特別行政區政府總部教育局 Education Bureau

Government Secretariat, The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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#### 黄嘉儀女士:

#### 有關私立(非直貨)中或小學申請成立法團校董會

謝謝你在本月26日的來電及28日的電郵。有關私立(非直資)中、小學申請成立法團校董會事宜的查詢,現謹覆如下:

- 2. 根據《教育條例》第 279 章 (《條例》)第 40BK 條「就現有學校設立法團校董會而作出呈遞」所述,資助學校的辦學團體,須向常任秘書長呈遞建議的法團校董會的章程草稿;至於直資學校及指明學校(《條例》附表 3 所列的學校為指明學校)的辦學團體,可以選擇是否為其屬校成立法團校董會。學校如要成立法團校董會,其辦學團體可向本局學校註冊及監察組(註冊組)提交有關的申請,並在法團校董會章程草稿獲得批准後,提交建議的校董名單及校董註冊申請書;在確定符合有關要求後,本局註冊組會根據《條例》第 40BN 條發出「法團證明書」。(請參閱本局網頁所上載的設立法團校董會流程介紹。)
- 3. 我必須重申,有關成立法團校董會的《條例》,僅適用於上述三種類別的學校(即資助學校、直資學校及指明學校);私立學校並不屬於上述任何一種類別的學校。如私立學校有意成立由不同持分者參與的校董會,其現有的校董會可以根據《公司條例》及其附屬法例申請註冊成立具法團地位的公司,並訂定該等章程大綱及章程細則。根據本局了解,目前有部分直資學校並沒有成立法團校董會,然而其校董會在合理切實可行的範圍內,引入不同的持分者註冊成為校董,並根據《公司條例》成立具法團地位的公司,體現多方參與學校管治的精神。
- 4. 如對上述資料有進一步的查詢,請致電 3509 8471 與本人聯絡;如查詢有關個別學校的運作情況,請致電與所屬分區學校發展組聯絡。

教育局局長

(梁婉萍 医 簡 代行)

2015年9月4日